

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,015

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS
AND ASBESTOS WORKERS, AFL-CIO, AND INTERNATIONAL
ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS
WORKERS, LOCAL 47, AFL-CIO, *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

No. 14,093

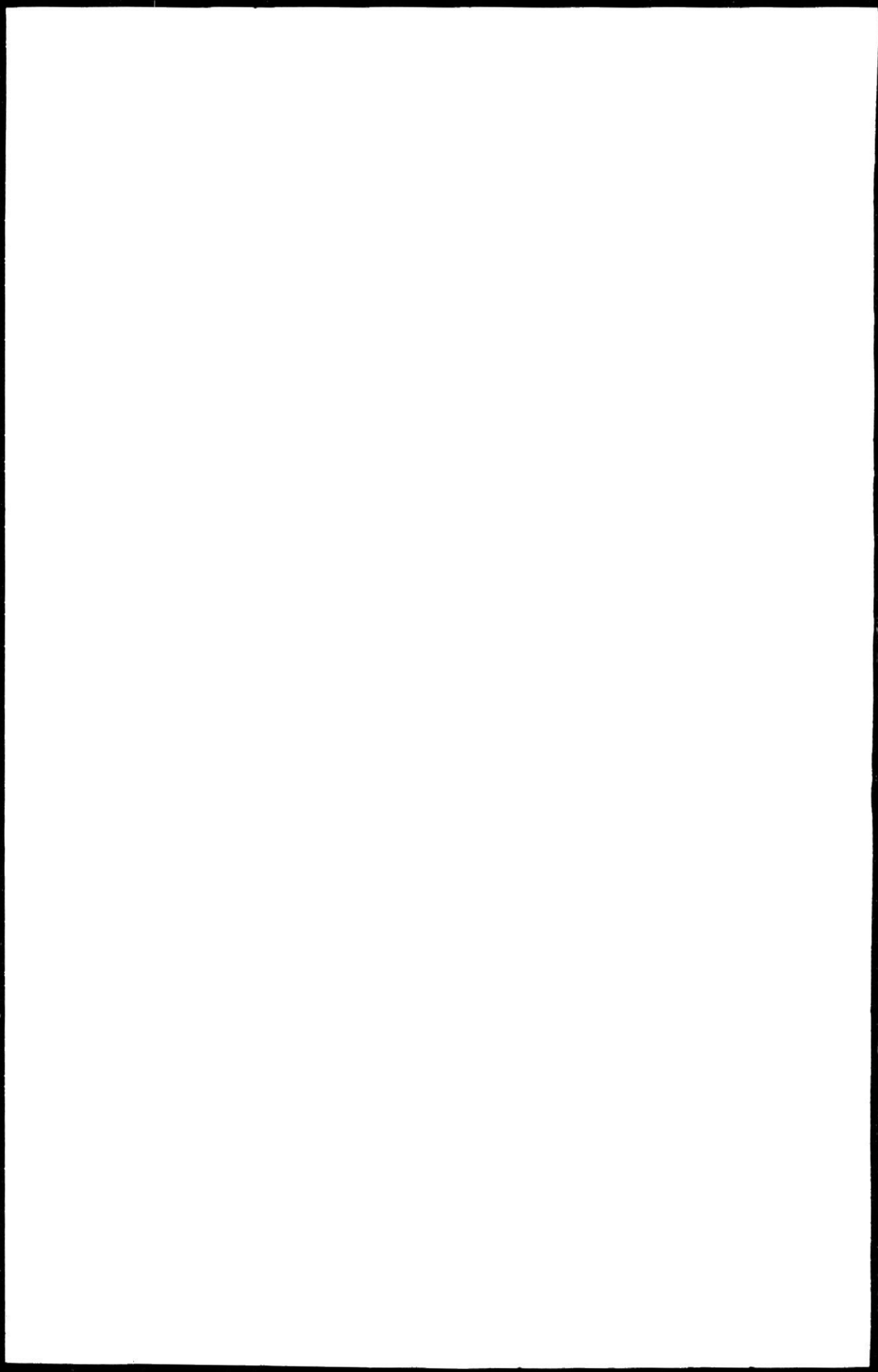
NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

ALEXANDER-STAFFORD CORPORATION, AND THE MASTER INSULA-
TORS ASSOCIATION, *Respondents.*

On Petition to Review and on Petition for Enforcement
of an Order of the National Labor Relations Board

Entered for filing at 10:15 a.m. 10/13/58
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FOR THE DISTRICT OF COLUMBIA CIRCUIT

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AND ASBESTOS WORKERS, AFL-CIO, AND INTERNATIONAL
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NATIONAL LABOR RELATIONS BOARD, *Respondent.*

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On Petition to Review and on Petition for Enforcement
of an Order of the National Labor Relations Board

JOINT APPENDIX

EXCERPTS FROM TESTIMONY AND PROCEEDINGS**BEFORE THE NATIONAL LABOR RELATIONS BOARD****Seventh Region**

In the Matter of:

ALEXANDER-STAFFORD CORPORATION

and

ROBERT ELEY, AN INDIVIDUAL

and

THE MASTER INSULATORS' ASSOCIA-
TION,

Party to the Contract,

and

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & AS-
BESTOS WORKERS, LOCAL 47, AFL,
and INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & AS-
BESTOS WORKERS, AFL,

Parties to the Contract.

In the Matter of:

THE MASTER INSULATORS' ASSOCIA-
TION

and

ROBERT ELEY, AN INDIVIDUAL

and

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & AS-
BESTOS WORKERS, LOCAL 47, AFL,
and INTERNATIONAL ASSOCIATION OF

Case No. 7-CA-1197

Case No. 7-CA-1198

HEAT & FROST INSULATORS & AS-
BESTOS WORKERS, AFL,
Parties to the Contract,
and
ALEXANDER-STAFFORD CORPORATION,
Party to the Contract.

1-(a)

In the Matter of:

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & AS-
BESTOS WORKERS, LOCAL 47, AFL,
and INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & AS-
BESTOS WORKERS, AFL

and

ROBERT ELEY, AN INDIVIDUAL

and

THE MASTER INSULATORS' ASSOCIA-
TION,

Party to the Contract,

and

ALEXANDER-STAFFORD CORPORATION,
Party to the Contract.

Case No. 7-CB-237

Circuit Court Room,
County Building,
Grand Rapids, Michigan,
Tuesday, September 6, 1955.

Pursuant to notice, the above-entitled matter came on for
hearing at 1:00 o'clock, p.m.

BEFORE:

ALBA B. MARTIN, Esq., Trial Examiner.

APPEARANCES:

ROBERT PISARASKI, Esq., Counsel for the General Counsel, National Labor Relations Board, Seventh Region, 314 East Jefferson Avenue, Detroit, Michigan.

1-(b)

ROBERT G. HOWLETT, Esq., Schmidt, Smith & Howlett, 330 Michigan Trust Building, Grand Rapids, Michigan, appearing for Robert Eley, an Individual, the Charging Party.

STEPHEN A. BRYANT, Esq., Uhl, Bryant, Slawson & Wheeler, 700 Michigan Trust Building, Grand Rapids, Michigan, appearing for The Master Insulators' Association and Alexander-Stafford Corporation, Parties to the Contract.

CARLTON R. SICKLES, Esq., Woodward Building, Washington, D. C., appearing for International Association of Heat & Frost Insulators and Asbestos Workers, AFL, Party to the Contract.

A. ROBERT KLEINER, Esq., Morse & Kleiner, 1006 McKay Tower, Grand Rapids, Michigan, appearing for Local 47, International Association of Heat & Frost Insulators & Asbestos Workers, AFL, Party to the Contract.

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JOHN BOND

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner: Give us your name and address, please.

The Witness: John Bond. Do you want my full address?

Trial Examiner: Yes, please.

The Witness: 744 East Walnut, Kalamazoo, Michigan.

Direct Examination

Q. (By Mr. Pisarski) Mr. Bond, what position do you hold with the Kalamazoo Asbestos Company? A. I am President.

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Q. And, is the Kalamazoo Asbestos Company a member of the Master Insulators' Association? A. Yes.

Q. I show you General Counsel's Exhibit No. 4 and ask you if this contract was negotiated by the Master Insulators' Association and I am referring to General Counsel's Exhibit No. 4 which I have just handed to you. A. Yes.

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Q. And, you signed this document on behalf of the Mas-

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ter Insulators' Association? A. Yes.

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Q. (By Mr. Pisarski) Mr. Bond, during the year 1953 and 1954, isn't it true that during the negotiations of the labor contracts, that the Master Insulators' Association entered into, every company either appeared personally or sent a representative? A. Not always.

Q. Suppose a member of the Association—Master Insulators' Association was not present, what steps would you take? A. Before we would sign a contract, we would talk to them by 'phone or personally and ask them if it was all right.

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Q. (By Mr. Pisarski) As to the year 1953, the employers met as a group, all the employers were members of the

Master Insulators' Association and jointly negotiated. Is this true? A. That's right.

Q. Now, what procedure was followed in 1954? A. The same thing.

Q. (By Mr. Pisarski) What changes were there in the negotiations for the year 1955? A. 1955 there was a committee of three men with a discussion on the new contract.

Q. And, why was a committee of three chosen? A. As a time saver, and we have had so many meetings that, oh, maybe four or five would show up and you couldn't get anywhere with just—with the Union and they had their committee there and so we appointed a committee to meet on the same basis as that.

Q. Now, who were members of this committee? A. Mr. Stafford, Mr. Willman and myself.

Q. Now, when you give the name Mr. Stafford, you mean Mr. Thomas Stafford of the Alexander-Stafford Corporation? A. That's right.

Q. And, during the year 1953 and 1954 the Alexander-Stafford assented to the Master Insulators' agreement? A. I think so.

Trial Examiner: You have some doubt?

Mr. Bryant: Do you know of your own knowledge, Mr. Bond?

The Witness: No, I don't.

Mr. Bryant: I'll object to that.

Mr. Pisarski: All right, let me ask you this question.

Q. (By Mr. Pisarski) During the negotiations, was Ralph Sasser present? A. During the negotiations, yes.

Q. On whose behalf was Mr. Sasser there? A. Alexander-Stafford.

Trial Examiner: Corporation?

The Witness: Corporation.

Trial Examiner: Is there any person named Alexander Stafford?

Mr. Pisarski: No.

Mr. Bryant: Alexander hyphen Stafford.

Trial Examiner: Is the name of the corporation Alexander hyphen Stafford Corporation?

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Trial Examiner: By the way, I don't think the record shows, may it be stipulated that Mr. Thomas Stafford is President of the Alexander-Stafford Corporation?

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Q. (By Mr. Pisarski) How long have you been President of the Master Insulators' Association? How long were you President? A. From the time it started until this year.

Q. And, it started in 1952, didn't it? A. Yes.

Trial Examiner: Until when in '55?

The Witness: July, 1955.

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Q. (By Mr. Pisarski) During the year 1953, did you participate in negotiations? A. Yes.

Q. Who brought the yellow form contract to the meeting? A. This white one?

Q. No, the yellow. The white is a photostat. A. The Union supplied them.

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Trial Examiner: May I ask, was your '53 contract the

first contract between the parties?

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Mr. Pisarski: No.

The Witness: This has been going on for twenty years.

Trial Examiner: Oh, really?

Mr. Pisarski: Not as an Association, though.

The Witness: But it is the same, almost the same agreement. When you get down to one year, you've gone over twenty years trying to remember names, I can't remember. I was there. Brimmer's name appears on the 1953 agreement, so he must have been.

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Q. (By Mr. Pisarski) Were you ever told by the negotiating committee that the union men would have preference

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over permit men? A. Yes.

Q. When were you told this? A. Oh, that is a known fact.

Trial Examiner: Just a minute. When were you told that?

The Witness: Well, for twenty years I have known that. That is what the agreement says.

Trial Examiner: Let me ask you this: When you say "we" are you referring to your own company or other employers who are members of the Association?

The Witness: I am referring to Kalamazoo Asbestos Company as "we," a corporation and contractor and if you want me to answer on the Association on any questions, you specify that so I'll know what I'm talking about.

Q. (By Mr. Pisarski) Yes. Now, I am asking you what is the interpretation the Association gave, not what individual members of the Association would give, but the Association itself?

Mr. Kleiner: Would give or did give?

Mr. Pisarski: 1953.

The Witness: There was no discussion.

Q. (By Mr. Pisarski) Was there any discussion in 1954 about Article I? A. No.

Q. In 1955?

Mr. Kleiner: I object again on the basis of our previous objection.

Mr. Pisarski: He said there was no discussion. I have to drop it.

Mr. Kleiner: No, I mean on 1955. I'll object to the materiality again.

Trial Examiner: Overruled. You may answer.

The Witness: I don't recall if there was any discussion or not.

Q. (By Mr. Pisarski) Would you read Article VII, please?

Trial Examiner: Article VII of the first four pages?

Mr. Pisarski: Yes, and the Articles common to all three contracts.

Q. (By Mr. Pisarski) Have you read it? A. Yes.

Q. Has the Association ever agreed to a specific number of men who would be put on a permit basis? A. No.

Q. To whom was that determination left to? A. The employer.

Q. Now, have there ever been any negotiations as to how many non union members would be given permits as employees?

Mr. Kleiner: What?

Q. (By Mr. Pisarski) Have there been any negotiations or discussions as to how many non-permit men would be

allowed to work?

Mr. Kleiner: Non permit men?

Mr. Pisarski: I mean non permit union men.

Trial Examiner: You mean men who do not have referral cards from the Union?

The Witness: No, no number.

Q. (By Mr. Pisarski) Has any employer to your knowledge, ever agreed to a number? A. Not that I know of.

Q. To whom was the determination left as to how many permit men would be allowed to work?

Mr. Kleiner: He has already answered that question once with a statement, "the employer."

Mr. Pisarski: He's answering it again.

The Witness: The employer asked.

Q. (By Mr. Pisarski) Asked what? A. Asked for men.

Q. How many men does he ask for? A. How many he needs.

Q. All right, now when he asks for the number of men, does he specify how many permit men he wants? A. No.

Q. Does he specify how many cardmen he wants? A. No.

Q. To whom is that determination left as to how many permit men or how many card men will be sent? A. To the business agent.

Trial Examiner: By "cardmen" what do you mean?

Mr. Pisarski: I mean union members.

Trial Examiner: The Article VII refers to referral cards and I take it you are using that as permit?

Mr. Pisarski: Yes. Earlier in my cross examination I used the word "bookmen." Mr. Bond was not familiar with it. I used the word "cardman." I think the words are synonymous. I am now using the word "card member" as meaning a member of Local 47.

Mr. Kleiner: I object to the word "permit" in here. There is nothing in Article VII that says anything about a permit.

Mr. Pisarski: All right, referral.

Mr. Kleiner: You are also using the words interchangeably?

Mr. Pisarski: Yes.

Trial Examiner: Did you so understand his questions that when he was talking about permit men, men with referral cards from the Union as contrasted to being union members?

The Witness: Yes.

Q. (By Mr. Pisarski) Now, suppose a Union cannot supply the men. What can an employer do under this contract?

A. We can hire our own, call the Union and they'll send us permits or referral slips to the men that we hire.

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Q. (By Pisarski) During the negotiations of these contracts, was there any discussion of Article VII? A. In '53, and I believe that Article has always been the same.

Q. All right, it's been the same. And then, if there was any discussion as to that Article, it was prior to 1953, is that correct? A. I believe, yes.

Q. Now, what was the practice prior to 1953 as to that clause?

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Mr. Kleiner: Can we make it definite as to whether it is Mr. Bond's practice or the Association's practice, if he knows?

The Witness: I don't know what the Association—

Q. (By Pisarski) You are President of the Association?

A. That's right.

Q. I spoke to you on the 29th of August in your office?

A. Yes, sir.

Q. Do you remember telling me at that time during the negotiations of these contracts, the Union insisted on the right to give its members preference over referral men?

A. You didn't say what year.

Q. I said we had discussed it. I say, did you tell me that, that there was a discussion over it? A. Yes.

Q. What years was there a discussion? A. I can't tell you the exact years.

Q. All right. Now, what was the practice that was followed?

Mr. Kleiner: Again, are you discussing the Association?

Mr. Pisarski: The Association.

Mr. Kleiner: This man has three times testified he does not know what the Association practice was.

Mr. Pisarski: This man has been President of the Association from 1952 in July until this—until the end of July, 1955. I think I should be given a right to go into this. He has testified that he has participated in all the bargaining sessions, including the 1955, of which he was

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one man of a three man negotiating team.

Mr. Bryant: But, he hasn't testified that he knows anything about the Association or what it did as a matter of practice. Maybe you better ask him what the Association did.

Trial Examiner: Now, the present question relates to the custom.

Mr. Pisarski: Practice.

Trial Examiner: I think he used the word "custom," the practice of the Association, of the members of the Association with reference to whether or not there is a limitation of the number of referral card men that they will hire.

The Witness: No.

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Q. (By Pisarski) Now, the same discussion I was referring to on July 29th or August 29th, you told me that dur-

ing the negotiations of these contracts, the Union representatives told the Insulators Association that if the employer members want to hire a man, they have to clear through the Union. In the event the Union cannot supply a man within forty-eight hours, an employer can then hire his own man. Is that true? A. We are supposed to call the business agent for men. If he has cardmen available, he is to send those. If he doesn't have any available, he is to send us permit men. If he can't supply them, then we go and get our own and they send this, the permit for the man.

Q. All right. Now, suppose he can't supply you with the permit man, what would happen under those circumstances under this contract? A. We'd probably go out and hire our own.

Q. When you hire your own, what would happen? A. We would call the business agent and have him send us a referral slip and get their name.

* * * * *

Q. (By Mr. Pisarski) Under the practices followed, the practice followed in this contract, who would be laid off first on a job, a bookman or a permit man? A. Permit man.

* * * * *

Q. (By Mr. Pisarski) Prior to the formation of the Master Insulators' Association, bookman had preference or cardmen had preference in employment over permit men. Is that true? A. That's true.

Q. Now, when the Association was formed and you began to bargain did the Union bargaining committee tell the Association that the same practices would continue?

* * * * *

Mr. Pisarski: I am making a distinction. Was it he told or was it said during the negotiations of the 1953 contract of the Master Insulators' Association that this practice would continue.

Mr. Kleiner: With Mr. Bond?

Mr. Pisarski: I want to know. The question is self explanatory. I don't know how you could make it any simpler.

Trial Examiner: Well, I take it you mean if they go along with the contract as previously written, that the practice by all members who signed the contract would continue to be the same. Now, with that idea, was that idea expressed in the bargaining negotiations during 1953?

The Witness: To me it is, because we have the same contract. If you don't change the contract, I don't know why you would have any other—

Trial Examiner: Practice under it?

The Witness: Yes.

Trial Examiner: Well, that wasn't quite the question. The question was whether or not the matter was discussed.

The Witness: In '53—I can't say.

Mr. Kleiner: What was the answer?

Trial Examiner: "I can't say."

Q. (By Mr. Pisarski) Do you know when the subject matter was discussed? A. No.

Q. But, you have a recollection of the discussion? A. Yes.

Q. Could it have been possible that you had this discussion prior to the formation of the Master Insulators' Association? A. Yes.

Q. (By Mr. Pisarski) Prior to the formation of the Master Insulators' Association, members of Local 47 had preference in the hiring over referral men. Is that true?

A. That's true.

Mr. Kleiner: I object again, Mr. Pisarski, that is as to him.

Trial Examiner: That is as to your corporation?

The Witness: Yes.

Q. (By Mr. Pisarski) All right. Now, do you know if this was the practice with other employers? A. I do not know.

Q. All right. After the Association was formed, during the negotiations, did the Union insist on retaining this practice? A. To me?

Q. During the negotiation meetings?

Trial Examiner: To the members of the Association present in the bargaining meetings, you and the others who were present.

The Witness: The agreements—

Trial Examiner: Did they insist on that or didn't they,

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do you know?

The Witness: It didn't change overnight. It was the same agreement, whether we had the Master Association or whether I signed it individually. There was no interpretation any different after I signed as the President of the Association than when I signed it individually. There were some that weren't in the Association. They signed individual agreements. They signed the same agreement. Not all the contractors are in the Association.

Trial Examiner: Not all of them?

The Witness: They weren't. I don't know whether they are now or not. I signed for the Association.

Q. (By Mr. Pisarski) Now, were these contracts the only ones entered into by the Association, the contract you have before you for that period of time? Was that the only contract entered into by the Association?

Mr. Kleiner: Is that—what year is that?

Mr. Pisarski: He's got it there.

The Witness: 1953.

Q. (By Mr. Pisarski) Let's take it one at a time. Did the Association enter into any other contract that year?

A. No.

Q. Now, this contract—

Trial Examiner: Did you get an answer to that?

Mr. Pisarski: He say "No, no other."

The Witness: No other contract.

Q. (By Mr. Pisarski) All right. Now, when you negotiated this contract, you negotiated on behalf of all the members of the Association, is that true? A. That's right.

Q. Now, there may have been some non members of the Association who followed the contract? A. That's right.

Q. But, you didn't negotiate for them, they followed it of their own accord? A. I didn't—I don't know.

Q. I just want to make it clear that they were non members of the Association who followed this contract so as to make it clear in his mind. Now, the members of the Association under that contract were required to call the Union first when they wanted help?

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Trial Examiner: Give us the Association practice, if you know it under Article VII, during the last three years.

The Witness: I don't know what they did.

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Trial Examiner: On the record. The parties are willing to enter the following stipulation, there being no objection by any party to its materiality in this hearing as to the contract in '53, but the Respondent Local objecting to its materiality insofar as it relates to the negotiations for '54 and '55. Subject to those objections, the parties stipulate that as a result of the collective bargaining negotiations of

the summer of 1953, '54 and '55, a so-called master agreement was entered into between the Master Insulators' Association on the one hand and Local 47 on the other, each year that is, and that the members of the Master Insulators' Association did not enter into separate agreements with Local 47 and they did consider themselves bound by that agreement. Is that a satisfactory stipulation?

Mr. Kleiner: I so stipulate. You say they consider themselves bound, you are talking about the individual companies and the Local Union?

Trial Examiner: I was referring to the individual companies.

Mr. Kleiner: I stipulate.

Mr. Pisarski: I will.

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Trial Examiner: All right. Let me ask you this, has the practice of your company changed at all under Article XI during the last twenty years?

The Witness: No.

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Trial Examiner: I'll rephrase the question. Do you feel that you know—I'll withdraw that. Are you informed as to what the practice of other members of the Association have been over that twenty year period under this Article XI?

The Witness: What they have told me is that they abide by the Article XI. Same as I do.

Q. (By Mr. Pisarski) What does abiding by Article XI consist of? A. By employing Local 47 men.

Q. Only?

Mr. Kleiner: Oh now, that's putting words in the mouth of the witness.

Mr. Pisarski: I'm asking him if it means only.

Trial Examiner: The question is whether it means only or not.

The Witness: Article XI doesn't say only.

Q. (By Mr. Pisarski) Did your practice under Article XI mean that you had to lay off a permit man before a cardman was laid off? A. Yes.

Q. Under Article XI was your practice to allow a cardman to replace a permit man? A. Yes.

Q. Under your practice, did you have to call the Union before you hired a man without a referral? A. We called them for the referral. If we hired one, then we would call them for the referral.

Q. All right. Now, when did you hire a man without a referral? A. When they didn't supply us with men.

Q. I'm sorry, who do you mean "they?" A. The Union.

Q. And, how long of a period would you have before you put the request in for a man before you could hire one on your own? A. Well, if we needed him the next day and no men showed up, we would go out and hire one.

Q. As a general rule, didn't you have to wait forty-eight hours? A. No, there is no specific time that we gave them a chance to get a man there, and if they didn't, we would go ahead on our own.

* * * * *

Q. (By Mr. Pisarski) What company followed the practice different from yours who are members of the Employers' Association? A. I don't know.

Q. Do any of them? A. I don't know.

Q. Now, these practices that you follow, they are in accordance with Sections 11, 1 and 7 of the contract? A. That's right.

Q. And, you're on the negotiating committee, you participated in the negotiations for 1953? A. That's right.

Q. You participated in the negotiations for 1954? A. That's right.

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Q. And, 1955 a committee of three men was appointed to expedite negotiations to represent the employers, is that true? A. That's right.

Q. These three men were yourself, Mr. Willman and Mr. Stafford, is that correct? A. Right.

Q. During these negotiations, was any interpretation than the one you followed ever brought up at the negotiation meeting? A. There was some clauses added to our contract this year.

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Trial Examiner: I'll permit you. Do you remember the subject matter of any clauses that were added?

The Witness: Well, I can tell you what they contain. It was this Taft-Hartley Law in compliance with all laws so that we wouldn't be in violation.

Q. (By Mr. Pisarski) And, this was discussed at the meeting, the negotiating meeting? A. That's right.

Q. Now, was there any discussion at the negotiation meeting that the employers would cease giving preference to cardmen over permit men? A. No.

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Cross Examination

Q. (By Mr. Bryant) Mr. Bond, yesterday you testified as to the meaning of Article I, Article VII and Article XIII and XI, Articles I, VII and XI of the contract which you say have been unchanged during the last three or four years. Is that correct? A. As I remember, that's correct.

Q. And, can you recall generally the phrasing of these general provisions that they are not all identical. Is that

correct? A. You mean all the—

Q. You see, I show you Article I relating to employees of the membership, I show you Article VII referring to employment of non-members and I show you Article XI referring to employment of the membership of Local 47 for the particular purposes here in insulation and so forth. Those are the three articles? A. Yes.

Q. I ask you, isn't it the fact that yesterday you testified when asked what those meant in terms of your practice, that they all mean exactly one and the same thing to you, namely that when you want an employee you call the business agent of the Union and he sends you somebody, and

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if he can't send you somebody, you hire somebody yourself and then call the Union and a referral slip is given, is that right?

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Q. (By Mr. Bryant) Those are true that Articles I, VII and XI mean substantially the same thing to you in your practice? A. That's right.

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Q. Mr. Bond, you stated that these articles which were discussed yesterday, Articles I, VII and XI had been in effect—you said, "Oh, we've had them for twenty years." Did you mean that literally? A. We've been operating as the Kalamazoo Asbestos Company, we've operated like that. There may be different numbers, but it is general practice for us ever since we've entered into it, the same meaning.

Q. And, you have developed your practice in this company over a period of time? You've been there twenty years, you say? A. That's right, and it is all supposed to be the other union contractors.

Q. And, the Associations' first contract, of which you

are a member, was in 1952, is that correct? A. Yes.

Q. As an Association? A. Yes.

* * * * *

Q. (By Mr. Bryant) So, isn't it a fact, Mr. Bond, that the way you operate under this contract since 1952 on, is based wholly and entirely on the practice you personally have developed over a twenty year period preceding the date that you began to have Association contracts? A. It hasn't changed.

Q. Mr. Bond, in your practice under the contract when you needed employees, you testified you called the business agent? A. That's right.

Q. Do you make any requests as to whether you be sent a Union or a non-Union man or do you just ask for an employee? A. We ask for mechanics.

Q. For a mechanic, meaning a skilled man? A. That's right.

Q. Do you have any objection if the man sent to you, you speaking as the President of your company, if a man with a referral is sent to you and he's a mechanic, do you have any objections to hiring him? A. If he's a mechanic, we have questioned whether these referral men are mechanics.

Q. But, if he were one, would you have any objection? A. No.

Q. Similarly, you have no objection if you are sent a cardman who is a good mechanic? A. That's right.

Q. And, you have never made any request as to whether you'll be sent so many referral men or so many union men, or have you? A. No.

Q. Have you ever had occasion to go out and not be furnished—not being furnished somebody by the business agent, you had to go into the open market, so to speak and hire somebody? A. That's right.

Q. You have had that happen? A. That's right.

Q. Have you ever hired such a man, called it to the attention of the Union, the business agent and been refused a referral on such a man? A. No.

Q. In other words, according to your practice, your only obligation with respect—the only obligation you conceive in your practice with respect to hiring, is to call the business agent and that he either sends someone or you go on to the open market and get someone? Is that correct? A. That's correct.

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Q. (By Mr. Kleiner) Under the terms of this contract, or under these contracts we've discussed, in your practice do the terms apply to all—the terms of the contract provisions apply to all your employees or just Union members? In other words, if you had some referral men working for you as well as union members, do these provisions apply to all of them or just the union members in practice? A. They apply to all the men that work with the tools, not the bookkeeper.

Q. I understand. A. Anyone that is working at the trade is governed by this contract.

Q. Irrespective of whether they are members or not? A. Don't make any difference.

Q. After your Association negotiates this contract, do each of you then operate under it separately as individual companies in respect to these labor relations covered by the contract? A. They are all supposed to abide by the con-

tract.

Q. By the contract. And, that is the Association policy, is it, the contract on labor matters? A. It is whether it is individual or whether it is in an Association.

Q. I understand that. There is no other Association policies, are there, Mr. Bond, on labor matters? A. No.

Q. Other than what is in this contract? A. That's right.

Q. You don't have any meetings during the year to decide how you are going to operate under the contract, do you? A. No.

Q. In other words, after the contract is signed that is as far as your Association gets together on labor matters for a full year or until the contract expires? Is that correct? A. It is not supposed to be. That is the way it has operated.

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Q. (By Mr. Kleiner) Now, in all of your testimony yesterday as to the practice of operating under these contracts, Mr. Bond, you told us how you operated. You were speaking of your own knowledge or your own company? A. That's right.

Q. Do you care whether the business agent sends you union members or non union members, as long as they are qualified and experienced men? A. I don't care.

Q. Do you feel you are violating the contract if he sends you non-union members? A. As long as he sends them.

Q. All right, do you feel you are violating the contract if you have to go out and hire men who are non-union members and ask for referrals for them? Do you feel that you have violated your contract then? A. I'm not violating a contract, but I don't like to do it.

Q. What is the reason that you don't like to do it? A. Because I don't get competent help.

Q. Now Mr. Bond, I don't know whether these all should be marked or not, Mr. Martin. They are the contracts going back away. We don't have duplicate copies of them here. Perhaps the record could show what they are, unless you feel a need for them being in evidence and we could have them copied.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: We have decided to give each of these documents an Exhibit Number, and while the reporter is doing that, we'll take a short recess.

(Short recess.)

(Thereupon, the documents above referred to were marked Local Union Respondent's Exhibits Nos. 1 thru 10 for identification.)

Trial Examiner: We will resume.

Mr. Kleiner: I have a stipulation proposed as soon as I jot these down. Mr. Trial Examiner, we have had marked for identification, the Local Union Respondent's Exhibits Numbers One through Ten. They are, No. 1, the '39, that is, the 1939 contract on a form headed "Agreement, Individual Employer." However, the agreement is signed by the Union, secretary of the Local Union and then signed for parties of the first part by the Murphy Supply Company, Jackson Insulation Company, Kalamazoo Asbestos Company, Alexander-Stafford Corporation, Willman in Saginaw and Engineering Service Company in Lansing. And, for the Alexander-Stafford Corporation appears the name of Thomas Stafford, the signature, and Mr. Bond the Kalamazoo Asbestos Company. Exhibit, Local Union Respondent's No. 2—

Trial Examiner: Excuse me. Of course, all you are doing now is tying in what appears on the document with the number?

Mr. Kleiner: For the record.

Trial Examiner: Are you going to have a stipulation as to what these are?

Mr. Kleiner: I shall propose a stipulation as soon as I have identified them for the record.

Trial Examiner: All right. And, if I may suggest, rather than calling it the contract, why don't you say, this is a piece of paper or a document, with the title above and bearing so many signatures and name the signatures or something like that and the date?

Mr. Kleiner: Local Union Respondent Exhibit No. 2 is a document with the heading, "Agreement, Master Insulators' Association."

Trial Examiner: What is the date of that?

Mr. Kleiner: Covering the year 1942. Now, when I refer to the year, I am talking about from the middle of the summer of that year to the middle of the summer of the following year. That is signed by Local Union 47 and contains—1942 signed by Local Union No. 47, also contains individual signatures with Mr. Bond and Mr. Alexander Stafford's—or Mr. Thomas Stafford's name appearing. Local Union Respondent Exhibit No. 3 is a document with the heading, "Agreement, Master Insulators' Association," signed by the individual companies as aforesaid and by Local Union No. 47. That is the contract for 1944. Local Union Respondent Exhibit No. 4 is a document, "Agreement, Master Insulators' Association," on the form and

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incidentally, a good many of these, including this particular Exhibit 4, have addendum and various provisions written in in addition to the printed form. That is the contract for 1945, or the document purporting to be such, signed by Local 47's officers and by the individual employers, including Mr. Bond and a man by the name of Evert, I believe, at the Alexander-Stafford Corporation. This document, Local Union Respondent's Exhibit No. 5 is a photostatic copy, the only one we have available for 1947. It again has this addenda and other provisions placed on it, signed by Local 47 and by the individual contractors, including the name of Mr. Bond and Mr. Evert. Local Union Respondent Exhibit No. 6 is a one page document which is dated or

headed, "Signed June 30, 1949," and it simply recites that the undersigned agree to pay the following rates to members of Local 47. It sets forth wage rates. It is not on any form and contains the signatures of the individual companies, Alexander-Stafford by R. E. Sasser, Contract Manager. I do not see Mr. Bond's name on this particular document. Local Union Respondent Exhibit No. 7 is similar to Exhibit No. 6 in its form, setting forth just the wage rates on a single sheet of paper. Again, contains the signature of the Alexander-Stafford Corporation by Mr. Sasser. It has the Kalamazoo Asbestos Company name signed.

Trial Examiner: What year?

Mr. Kleiner: And, this is for—Well, it says, "We the undersigned agree to pay the following rates to members of

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Local 47 Heat Frost and Asbestos Workers until this agreement expires June 30, 1951." So, this is the 1950 agreement. At the top it says, "Signed August 14, 1950." Exhibit No. 8 is a similar document to six and seven. It is on the letterhead of the Local Union. It contains the wage rate information, no form. It contains the signatures of the contractors, Mr. Bond's signature does appear for the Kalamazoo Asbestos Company. Alexander-Stafford Corporation does not have any individual signing for it, although the name of the corporation is there.

Trial Examiner: What is the year?

Mr. Kleiner: That is the 1951 agreement which expires in 1952. Local Union Respondent Exhibit No. 9 again is a photostatic copy. It is the agreement signed in September, or purports to be, agreement signed in September of '52 to expire June of '53. It contains the same wage information, does not contain any printed form or other clauses. It contains the signature of Kalamazoo Asbestos by Mr. Bond and the Alexander-Stafford Corporation by Mr. Sasser. It does indicate by its terms at the bottom, "It is under-

stood that this Agreement is subject to approval by the Construction Industry Stabilization Commission, and shall be effective for the full payroll period immediately preceding the date of receipt of notification of approval." And, it has a note, "1952 rejected C I S C." This next document is one half of Exhibit No. 10. Exhibit No. 10 is two similar documents on single sheet letterhead of the local union.

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The first is dated March 9, '53 which reads, "We the undersigned agree to pay the following rates of wages as per agreement, to members of Local 47 Heat and Frost and Asbestos Workers, from March 9th, 1953 to June 30th, 1953, when this agreement expires." Signed by Local 47 business agent, Lawrence Brimmer and signed for the Master Insulators' Association by John W. Cummiskey, its attorney. It is not on a form and does not contain other than the wage information. The other half of Exhibit 10 is dated June 24, 1953, contains the same heading. It is an agreement to pay certain wages from March 9th to June 30th of 1953 and this one is signed by Mr. Brimmer for the Local, by Mr. Bond as President of the Association and by Mr. Johnson, Robert A. Johnson, secretary of the Association and by Mr. John W. Cummiskey, its attorney.

The stipulation which I propose is essentially this: We stipulate that the individual companies whose names appear on these documents jointly negotiated during these years with the local union and that these documents represent the agreements reached between the individual companies, largely negotiating jointly with the local union for the years that these documents cover, that these documents were executed by the individual companies up until the year that the Association was formed as an organization, sometimes at the time of the joint negotiations and sometimes when the union representative would take it around from company to company after they had been put into final form, and I propose that we also stipulate that these

signatures appearing thereon are the genuine signatures and that these documents do contain the agreements of the parties during that period of time.

Mr. Pisarski: I'll so stipulate.

Mr. Bryant: We'll so stipulate.

Mr. Sickles: We so stipulate.

Trial Examiner: Now, it is understood that the stipulation means that each year where the names of a number of corporations appear on the contract that that means that the contract was jointly negotiated by the employer whose signature appears on the contract?

Mr. Kleiner: We will say this, that the fact may be that there were some individual negotiations by those individuals during the year, but for the purposes of this case, we won't argue that there wasn't joint negotiation by these employers during the years covered. There may have been some instances where they were not. We would not argue. If it has a material bearing on the case—

Mr. Stafford: We went in freely as individuals and bargained at those times. It was a group.

Trial Examiner: I appreciate the effort to reach a stipulation. I just don't want you to stipulate something that wasn't a fact if you know it was a fact.

Mr. Bryant: Mr. Stafford's point is that it was jointly,

not as an Association, but it was a group of employers dealing jointly. They were still free to come and go as they pleased without any organizational ties, and I think that is what it is.

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Q. (By Mr. Kleiner) Mr. Bond, I also show you General Counsel's Exhibit No. 4 which was the 1953 agreement and ask you to look at Articles VII and XI and to

compare those two Articles between the two contracts.

Trial Examiner: This is the '44 contract and the '53?

Mr. Kleiner: That is correct.

Q. (By Mr. Kleiner) Do you see a difference in Article VII, Mr. Bond? A. Yes. The 1944 contract Article VII says, "the trade Board determines—In cases where the

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Joint Trade Board determines an 'emergency' exists for which Local No. 47 fails to supply Mechanics or Improvers," and in Article VII, 1953 it merely states, "Local 47 will direct non members to the employers in the number agreed upon and shall issue them referral cards for purpose of identification and classification."

Q. All right, and under the '44 contract after what you read from Article VII, there is this wording, that "these emergency numbers agreed upon, these emergency mechanics and improvers shall work under permit of Local No. 47 until replaced by members of the Union," does it not? A. That's right.

Q. And, that has been changed in Article VII of the '53 contract has it not? A. That's right.

Q. Now, that is in contradiction of your memory of yesterday that these clauses were the same for over twenty years? A. I say we operated the same under these agreements.

Q. Oh, I see. A. And, the meaning of them is carried through with our particular operation and I believe it still exists today.

Q. And, by way, you mean? A. No, our company, Kalamazoo Asbestos Company.

Q. All right. Now, were you in the negotiations in 1953, did you say? A. I think so, yes.

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Q. And, you say that each year you go down to check off the clauses whether they will be the same or not and

discuss them if they are going to be different? A. Yes, I believe I have.

Q. Was there a check on that one, when that particular one was changed? Was there any checking and discussion?

A. Not that I recall.

Q. I see. Do you recall that—well first, let me ask you, do you find a difference in Article XI in these two contracts? Let's look at '44 first. Doesn't that provide the party of the first part, which would be the contractor, agrees to have all work in the application of pipe and boiler covering and so forth executed by good standing members of Local 47? A. That's right.

Q. And, Article XI in the '53 contract deletes that requirement that all work be done by union members in good standing? A. That's right.

Q. And, do you recall, Mr. Bond, that after the passage of the Taft Hartley Act, you used these single sheet memos for agreements rather than the form, because of the fact of the feeling that there was an illegality of these clauses under the Taft Hartley Act as found in the old form? A. That's right.

Q. And, that the first time you used the form again was

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this new form that had been changed in 1953? A. I don't know when we started using it, but—

Q. It was after your Association? A. That's right.

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Q. Did you at any time during this negotiation have any gentlemen that you met during the negotiation, purport to represent the International Association? A. No.

Mr. Pisarski: I object to the question. It calls for a conclusion.

Mr. Sickles: I don't believe it did call for a conclusion.

Mr. Pisarski: It is a question of fact, what the man said,

what the man did and what happened when the man was there would show his agency.

Trial Examiner: Overruled. I'll permit it.

Q. (By Mr. Sickles) Will you answer the question? A. I said, "no."

Trial Examiner: Did you get an answer?

Q. (By Mr. Sickles) During any of your negotiations with Local Union 47, have you ever met, during those negotiations, any individual who has purported to represent the International Association? A. Over twenty years?

Q. In the entire period.

Mr. Pisarski: I object to this question.

The Witness: Yes.

Q. (By Mr. Sickles) Do you remember when that was?

Trial Examiner: What was that, Mr. Pisarski?

Mr. Pisarski: I object to the question, again.

Trial Examiner: On the ground that it is twenty years?

Mr. Pisarski: I was precluded on asking on direct examination whether the men told him, whether any of the union members told him that they were not allowed to enter any other agreement except this one. There was an objection and it was sustained. Now, he is going into precisely the same thing by asking the same question in a different manner, where he is asking whether they purported to be members of the International Union and if it is not admissible on my direct, it certainly is not admissible on Mr. Sickles's cross and I fail to differentiate between the two questions. I asked him what he was told and who the negotiating committee were and the objection was raised and it was sustained, but Mr. Sickles is now asking him what did these men purport. It is the same thing.

Trial Examiner: You understand the meaning of the word "purport," don't you, Mr. Bond?

The Witness: No.

Trial Examiner: I'll permit the approach you are using,

which I think is proper, but suppose you use a better word than that.

Q. (By Mr. Sickles) Did any individuals during any of

your negotiations with Local 47 state that they represent the International Association rather than Local Union No. 47? A. No.

Mr. Pisarski: I object to that question too, it is exactly the same question he asked, phrased a different way.

Trial Examiner: Overruled. The answer may stand.

Q. (By Mr. Sickles) At any time during these negotiations in your memory did you ever intend to, or execute an agreement with the International Association as distinguished from the Local Union? I'll phrase it another way. Did you think you were dealing with the Local Union, or did you think you were dealing with the International Association?

Mr. Pisarski: I object to that question. The contract speaks for itself. The contracts are in evidence.

Mr. Sickles: Well, it is really unimportant. I'll withdraw it. I think I have established the fact.

Trial Examiner: All right, the question is withdrawn.

Q. (By Mr. Sickles) Do you know who the officers of Local Union 47 are?

Trial Examiner: Today?

Q. (By Mr. Sickles) Today? Do you know who the President of Local 47 is? A. No. I have the list in my office.

Q. Do you know who the business agent of Local 47 is? A. Not for sure.

Q. Do you know any of the International officers of the Asbestos Workers International? A. No.

Q. Have you ever been introduced to an officer?

Mr. Pisarski: I'll object to this line of questioning. What is the materiality and relevancy as to whether he knows

what position they hold? Suppose he doesn't know what position they hold? They still could hold the positions.

Mr. Sickles: He has never met them, so they couldn't negotiate.

Trial Examiner: What is the present question?

Mr. Sickles: I asked him if he knew any of the officers of the International Association.

Trial Examiner: By name?

Mr. Sickles: If he knows who they are.

Trial Examiner: I'll permit it.

The Witness: Just from a book that I have in my office.

Q. (By Mr. Sickles) You have never personally met any of them? A. No.

Q. Now, I'll direct your attention to Local Union Respondent's Exhibits—number two. Will you look at Article IV on that Exhibit and describe it? A. Article IV looks like it's been crossed out.

Q. Will you look at Article VII on that Exhibit—no, Article VIII? A. Yes.

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Q. Describe it? A. That has been crossed out.

Q. Will you describe this sheet? A. This is a typewritten sheet attached to the other sheets, Article IV, Article VIII, Article IX has been attached.

Q. I direct your attention to Local Union Respondent's Exhibit No. 4 and ask you to describe Article IV in its condition? A. Article IV has been typewritten on a separate sheet of paper and pasted to the original sheet.

Trial Examiner: Which exhibit is this?

Mr. Sickles: I beg your pardon?

Trial Examiner: Which exhibit is this?

Mr. Sickles: Four, In the interest of time, actually I'm not going to do much more.

Q. (By Mr. Sickles) Will you describe this sheet? A. This is a separate sheet of paper attached to the original sheet and it is Article IX and that's all.

Q. Will you describe Article IX as it appears on the printed form? A. Article IX has been crossed off.

Mr. Pisarski: What is the purpose of these questions?

Mr. Sickles: The purpose is to show that although this is a form agreement, there have been changes made.

Mr. Pisarski: Oh, I'll agree with that, any changes that have been made have been typed in and made a part of, sure. I'll agree to that.

Mr. Sickles: That the agreement, although much was made of the fact that it is a form agreement in the testimony yesterday, you will agree that there have been paragraphs added and certain paragraphs changed?

Mr. Pisarski: I may be wrong, but I understood when Mr. Kleiner introduced these documents, he introduced all of them, the attachments thereto.

Mr. Kleiner: That's correct.

Mr. Pisarski: Yes.

Mr. Kleiner: I think Mr. Sickles is simply attempting to get into evidence the fact that there was no set form that had to be followed, that the parties could vary the form as they desired.

Mr. Pisarski: I don't think that would show it. All that it would show is that they had been varied in this respect, and that is all that it would show in any circumstances. Certainly Mr. Bond, who couldn't testify yesterday as to the negotiations quite recently, you couldn't ask him what happened in 1939.

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Redirect Examination.

Q. (By Mr. Pisarski) During the examination by Mr. Kleiner, you referred your attention to Article VII. I would like to read it to you now. "In cases where the Joint Trade Board determines an 'emergency' exists—"

Mr. Kleiner: Just a moment, Mr. Pisarski. Is that the same contract?

Mr. Pisarski: Local Union Respondent's Exhibit No. 1. The same clause appears in Local Union Respondent's Exhibit No. 2. The same clause appears in Local Union Respondent's Exhibit No. 3.

Mr. Kleiner: I would prefer to have you use three. That is the one that I—you must have three over there.

Mr. Pisarski: I've got three. The same clause exists in Local Union Respondent's Exhibit No. 4. The same clause exists in Local Union Respondent's Exhibit No. 5. This clause reads as follows and in all documents the clause is—the clause referred to is Article VII. "In cases where the Joint Trade Board determines an 'emergency'," emergency is in quotations, "exists for which Local No. 47 fails to supply Mechanics or Improvers, the party of the first part may secure the 'emergency' number agreed upon. 'Emergency' Mechanics and Improvers shall be paid the rate of wages as hereinafter specified in this agreement, and shall work under 'permit'," and permit is in quotation marks, "of Local 47 until replaced by members of said Union."

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Q. (By Mr. Pisarski) Now yesterday when you testified as to your operations that cardmen had a right to replace permit men, that the cardmen had a right to come on the job ahead of permit men, you were referring to your actions under these clauses, clause number seven? Here, I'll show it to you. A. Well, it don't make any difference what article, that's the way we operate and—

Q. And, non members had to have a permit as this article provides? A. That's right.

Q. And, as this article provides, the permit men could be replaced by union members? A. That's right.

Q. Now, when the formal Association was formed and you signed the first contract in the name of the International—

Mr. Kleiner: In the name of what?

Mr. Pisarski: Master Insulators' Association, I'm sorry.

Q. (By Mr. Pisarski) What discussion was there to change these practices referred to in Article VII of Local 47's Exhibits one through five? A. No discussion as I recall.

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Q. (By Mr. Pisarski) Now, although Article VII no longer states it in the new agreements, that is General Counsel's No. 4, you still follow the practice as put in Articles I—in Article VII in Respondent's Exhibits One through Five, Union Exhibits One through Five?

Mr. Kleiner: He testified no. They don't have a joint trade board.

Mr. Pisarski: He has not testified that he does not replace permit men with card men.

Mr. Kleiner: That wasn't your question. The question was whether you followed the provisions of the contract.

Mr. Pisarski: Kleiner, there are two parts to this question. One provides for the establishment of an emergency by the Joint Trade Board. He has testified that the Joint Trade Board has never been established. I'll accept that

answer. The second part of it states that, "shall work under permit of Local 47 until replaced by members of said Union." Now, I am asking him is that practice followed.

Mr. Kleiner: That they still have permits?

Mr. Pisarski: That they can be replaced by cardmen.

Mr. Sickles: Who?

Mr. Pisarski: Permit men.

Trial Examiner: Permit men shall work until they are replaced by—

Mr. Pisarski: Cardmen.

Trial Examiner: Cardmen.

Mr. Kleiner: Whether they still have permits or not?

Mr. Pisarski: No, sir. I know they have permits or referrals.

Mr. Bryant: No, they do not.

Trial Examiner: Do you understand the question, Mr. Bond?

The Witness: No, I do not.

Q. (By Mr. Pisarski) If—when they—when did they stop issuing permits in the union? A. When they started referrals, I believe.

Q. All right, what is the difference between a permit and a referral? A. I can't tell you.

Q. Is there any difference? A. I can't tell you. Not to me there isn't. There may be writing on there. I have never read one.

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Mr. Pisarski: That's all. He's explained it. The permit and referral are one and the same thing.

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THOMAS STAFFORD

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

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Direct Examination.

Q. (By Mr. Pisarski) Mr. Stafford, do you hold a position with the Alexander-Stafford Corporation? A. Yes.

Q. What position is that? A. President and General Manager.

Trial Examiner: Excuse me. Will you put your chair back this way a little bit, Mr. Stafford?

The Witness: Yes.

Q. (By Mr. Pisarski) Do you hold a position with the Master Insulators' Association? A. Yes.

Q. What position is that? A. President.

Q. Were you a member, was your firm a member of the Master Insulators' Association during the years 1953, 1954 and 1955? A. Yes.

Q. (By Mr. Pisarski) I show you General Counsel's Exhibits Nos. 4 and 5. General Counsel's Exhibit 4 is the collective bargaining agreement entered into by the Master Insulators' Association for the year commencing July, 1953 and General Counsel's Exhibit No. 5 is the collective bargaining agreement entered into by the Master Insulators' Association on July 1, 1954 and ask you, are these the con-

tracts that were entered into on behalf of the Alexander-Stafford Company by and through the Master Insulators' Association? A. They are.

Q. During the year 1953, negotiations during the year 1953, was Mr. Ralph Sasser your representative at the collective bargaining sessions? A. He represented the corporation.

Q. The Alexander-Stafford Corporation. You followed these two contracts and adopted them as your contracts at the—were these contracts filed by the Alexander-Stafford Corporation? A. These were the contracts signed by the Alexander-Stafford Corporation by Ralph Sasser.

Trial Examiner: Did Mr. Sasser sign them both?

The Witness: Both of the two, he signed, yes, sir.

Trial Examiner: Did he also represent the corporation in the 1954 negotiations?

The Witness: Both '53 and '54, these two, he did.

Q. (By Mr. Pisarski) What position did Mr. Sasser hold with your company at that time? A. Manager of the contract department.

Q. When did Mr. Sasser leave your employment? A. July 11, 1954.

Q. As manager of the contract department during the period July 1, 1955 to the date of his leaving your company, what were his duties? A. He estimated jobs, made

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bids on the jobs which we received contracts to do. He executed the contracts which included hiring of men. He did not buy material.

Q. Did he have the right to hire employees on behalf of the corporation? A. Yes.

Q. Did he have the right to direct the work of the employees? A. Yes.

Q. Did he direct the work of the employees? A. He did.

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Q. I see. And, would Mr. Sasser lay off an employee if there was not sufficient work to go around? A. He would have to, yes.

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Q. (By Mr. Pisarski) Did you receive a phone call from Mr. Fisher on May 20, 1954? A. I wouldn't be able to identify the date.

Q. Sir? A. I wouldn't be able to identify a date. I have received many phone calls from him, but whether I received one from him on May 20, I couldn't tell you. Oh, wait a minute. Now, you're coming back, I think I'm finding out now what you're talking about. Yes. Yes, that was the time that Mr. Fisher called me and said that the Montague job was closing down and that there would be a number of

men laid off, could we use them. That is what you are referring to, sir?

Q. Yes. A. Yes, I've got it now. You threw dates at me—

Q. Well, I was leading up to it. A. Yes.

Q. Now, what was that conversation about as best you can remember? A. Just as I'm stating, the Montague job was closing down. He had men who were out of work.

Q. And, were these men members of the Union that were being laid off at Montague? A. I wouldn't know, but I would assume they were members.

Q. Did he tell you they were members? A. No. He said he had men working there.

Trial Examiner: When was that conversation?

Mr. Pisarski: May 20 of 1954, May 20.

Q. (By Mr. Pisarski) He asked you to see if you could put any men on, is that correct? A. That's right.

Q. Who did you talk to about this matter? A. Well, you mean, did I talk to Mr. Fisher?

Q. After Mr. Fisher, did you speak to anybody about this matter? A. I told Mr. Fisher what I would do and I talked to Mr. Sasser, yes.

Q. And, what did you say to Mr. Sasser? A. I told him what Mr. Fisher had told him and instructed him if it were possible, to take on what men he could.

Q. Do you know if Mr. Sasser called Mr. Fisher back? A. I couldn't say for sure.

Q. Now, was Mr. Eley an employee of your company on May 20, 1954? A. Yes.

Q. After May 20, 1954, did you hire a man called Norman Griebel? A. Yes.

Q. What date was he hired on? A. I would have to get the record if you want the precise day.

Mr. Pisarski: May we go off the record?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Q. (By Mr. Pisarski) Not from that list, but could you tell from your other records if Bernie Wines was hired on the 21st? A. It would have to come from this list. It is the only list that we have.

Q. All right. A. From this list it would appear that he was hired about that time, yes.

Mr. Kleiner: What was that date?

Trial Examiner: Bernie Weiss?

The Witness: Wines, W-i-n-e-s, the kind of wine that we like.

Mr. Kleiner: Was hired when?

Trial Examiner: Said he was hired about—

Mr. Pisarski: June 3rd.

Trial Examiner: May 21st, didn't you say?

Mr. Pisarski: No. Bernard Wines and Norman Griebel were hired May 21st.

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Mr. Kleiner: Bernard Wines is what you just said.

Trial Examiner: Also Norman Griebel. How do you spell that Griebel again?

Mr. Pisarski: G-r-i-e-b-e-l. I now propose to receive into evidence, General Counsel's Exhibit No. 12. I ask that be received in evidence by stipulation. General Counsel's Exhibit No. 12 is a summary of the employees obtained by Mr. Stafford from the company's books and records showing the dates of employment of new employees for the period May 20th, 1954, to July 31st, 1955.

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Q. (By Mr. Pisarski) From that list that you have before you, General Counsel's Exhibit 12, can you tell the

exact date that G. H. Buckley was hired? A. His first pay day—

Q. Sir? A. His first pay day was June 4. He therefore, was hired the week previous.

Mr. Kleiner: Well, can we clarify that? June 4, '54?

The Witness: June first, fifty-four.

Mr. Kleiner: Is that a Monday or a Friday?

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The Witness: That is a Tuesday.

Trial Examiner: June 4, '54 was a Friday.

Mr. Kleiner: What?

The Witness: Then that would be the date ending, yes, that was the week.

Trial Examiner: Well, according to the '54 calendar that I have before me, June 4th—

The Witness: Would have been Friday.

Trial Examiner: It is Friday.

The Witness: We pay on the following Tuesday. I am confused.

Trial Examiner: When do you say he was hired?

The Witness: He was hired the week ending June 4.

Trial Examiner: Sometime that week, but you don't know which day?

The Witness: I couldn't, without getting out the time records.

Mr. Pisarski: Do you have the time cards with you?

The Witness: I do not have them.

Mr. Pisarski: Can we go off the record a minute?

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Mr. Pisarski: In an effort to clarify the exact time and date of hiring certain individuals, I've handed Mr. Stafford an affidavit that he signed which was prepared by him and

Mr. Myron K. Scott, Field Examiner on the 9th day of December, 1954. At that time, Mr. Stafford and Mr. Scott went over the time cards and they have the exact dates of these individuals' hiring which are not available in Court. I am handing the document to him to refresh his memory.

The Witness: They do not give the exact date. They give the date ending.

Q. (By Mr. Pisarski) This affidavit on page two says Mr. Buckley was hired June 5. Is that true? A. No, the week ending June 5. He was hired on June 3rd, that's right.

Q. When was Dean Dyer hired? A. Started on June 10th.

Mr. Kleiner: What was that name?

Mr. Pisarski: Dyer, D-y-e-r.

Mr. Kleiner: That was June 10th?

Mr. Pisarski: Yes.

Q. (By Mr. Pisarski) And, Max Harper and Clyde Seiver— A. That is correct, June 10th.

Q. Norman Griebel and Bernie Wines were hired on the 21st? A. If that is the—yes, I believe that is correct.

Q. Twenty-first of May? A. I'm sure that is when it was.

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Q. That is all from that list? Thank you, Mr. Stafford. Subsequent to your call from Mr. Fisher, you spoke to Mr. Sasser your contract manager, related the news that men were off at the Montague job and instructed him to take what men he could, is that correct? A. That is correct.

Q. Did you give him any instructions with respect to laying off any men? A. None.

Q. Did you discuss a specific number of men he might

take on? A. No.

Q. Had Mr. Fisher requested you to take on any specific number of men? A. No.

Q. Had Mr. Fisher requested you to discharge any man or lay off any man to make room for Montague men? A. No.

Q. What did Mr. Sasser say to you when you told him that you wanted him to place men as he could from this group from Montague? A. He didn't like it.

Q. Do you recall his words? Did he refuse to do it? A. No, he didn't like the men, possibly, that were on the Montague job.

Q. It was a personal matter, possibly?

Mr. Pisarski: I would like to have Mr. Stafford testify only as to what Mr. Sasser told him, not what Mr. Stafford feels were Mr. Sasser's feelings.

Q. (By Mr. Bryant) He did tell you he didn't like to place these men? A. He didn't want to take them.

Q. You instructed him, nevertheless to do what he could?

A. I told him that men liked their pay check, that they needed them, that he was to take what men he could and that the best way to get along with the Union was always by reasonable cooperation.

Q. So far as you can recall, that was your exact conversation? A. That was.

Trial Examiner: Is there a town called Montague?

The Witness: Yes.

Trial Examiner: These men worked somewhere on that job?

The Witness: Yes, big job.

Trial Examiner: Montague, Michigan?

The Witness: Montague, Michigan, Hooker Electro-Chemical job.

Q. (By Mr. Bryant) Subsequent to your conversation with Mr. Fisher, and your instructions to Mr. Sasser, did

you have a further conversation with Mr. Fisher on May 20? A. No.

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Q. Mr. Stafford, do you have a man by the name of Mr. Kranenberg working for you? A. I do.

Q. What is Mr. Kranenberg? A. Mechanic.

Q. He is a mechanic. And, is he a foreman? A. Yes.

Q. And, by a foreman, you are referring to what is termed a "working foreman?" A. That is correct.

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Q. A lead man so to speak, on the job? A. Yes, that is correct.

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Q. (By Mr. Pisarski) Did you know that Mr. Eley had a referral, held a referral at the time of his employment was terminated on May 20, 1954? A. I do not believe in the first place, his employment was not terminated in 1954

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and in the second place, I think he had a permit, not a referral.

Q. What is the difference between a permit and a referral? A. A permit is a sheet, a piece of paper on which is printed a form and signed by the business agent which permitted the man to be employed, and I believe, by any shop. I don't—under certain dates.

Q. Now, do you know what the period of time of Mr. Eley's permit was good for? A. I do not know precisely, because I do not have it. Mr. Eley had it. I am of the impression that it was good for a few more days after the time he left our employment.

Mr. Kleiner: I will ask the last question be stricken. This

witness has testified that he doesn't know and then goes on to say, "I'm under the impression." I don't think that is competent evidence.

Trial Examiner: I'll permit the testimony to stand if Mr. Eley's permit is available. That would be the best evidence.

Mr. Pisarski: Yes, I'm going to put it in through Mr. Eley. I wanted to know—the question is merely to find out if Mr. Stafford knew.

Trial Examiner: Are we going to have an example of a referral in evidence, too?

Mr. Pisarski: Yes.

Mr. Kleiner: There is only one kind. There is the refer-

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ral. There isn't two documents, that I know of.

Trial Examiner: The evidence thus far, both the words have been used, suggesting that there may have been a different card, one called a permit and one called a referral.

Mr. Sickles: Some few years ago there used to be.

Trial Examiner: Yes.

Mr. Kleiner: Mr. Pisarski said yesterday he was using the two terms interchangeably.

Mr. Pisarski: Yes, I was under the impression that there was only one document and that is called—when I used the words "referral" and "permit" I used them interchangeably referring to one single document which we will put into evidence. I have no knowledge of two separate documents.

Mr. Kleiner: As far as the Local Union knows, there is only one document. That is the yellow form that says referral.

The Witness: There is only one form now, but there was a change made, as you are aware, and I believe that Mr. Eley will confirm my statement that he had a permit, not a referral, or did he have a referral? It was dated referral,

all right. There was something there, I knew there was something about it.

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VIRGIL P. FISHER

a witness was called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Trial Examiner: Give us your name and address.

The Witness: Virgil Fisher, 5872 Potter Street, Haslett, Michigan.

Direct Examination.

Q. (By Mr. Pisarski) Do you hold a position with Local 47 of the Asbestos Workers? A. Pardon?

Q. Do you hold any position with Local 47 of the International Association of Heat and Frost Insulators and Asbestos Workers?

Mr. Kleiner: International are you asking?

Mr. Pisarski: No, Local 47 of the International Association.

The Witness: I'm a member.

Q. (By Mr. Pisarski) Are you the business agent? A. Yes, sir.

Q. How long have you been the business agent? A. Ap-

proximately a year and a half.

Q. Were you the business agent on May 20, 1954? A. Yes, sir.

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Trial Examiner: Well, Mr. Fisher, is Local 47 in any way affiliated with the International Union?

The Witness: I would say that there is a rather close relationship.

Trial Examiner: Is Local 47 in any way governed by the Constitution of the International which is marked for identification as General Counsel's 14?

The Witness: Would you repeat that, please?

Trial Examiner: I say, is Local 47 in any way governed by the provisions of the Constitution of the International, which is General Counsel's 14 for identification?

The Witness: I would say in certain instances and phases that there is a connection there.

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Trial Examiner: Does General Counsel's 14 include the by-laws, laws—

Mr. Pisarski: It is a combination copy of Constitution and By-laws. They are all merged into one document.

Mr. Kleiner: Mr. Martin, based upon this efficacious testimony, I think there has been proper identification now that there is a connection and I will withdraw my objection.

Mr. Pisarski: May it be received into evidence?

Trial Examiner: Any objection to receiving this exhibit into evidence now? I'll receive General Counsel's 14.

(The document heretofore marked General Counsel's Exhibit No. 14 for identification, was received into evidence.)

Mr. Pisarski: Will you please mark this fifteen?

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 15 for identification.)

Trial Examiner: May I see fourteen, please? Mr. Fisher, this was the one that was adopted at the Eighteenth Convention in Los Angeles September 2, 3, and 4, 1952, according to the front page. Is this the same—is this Constitution, that is the one of '52, still in effect?

The Witness: Yes, sir.

Trial Examiner: Has it been changed since then?

The Witness: Not to my knowledge.

Trial Examiner: Have you been a member of the Union, at least since September of '52?

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The Witness: Yes, sir.

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Trial Examiner: I would like to ask Mr. Fisher, this Local By-laws, as it is called on page twelve of this book which is General Counsel's Fifteen for identification, relates to the year 1952, at least according to the blue cover. Now, my present question is, was that local by-law changed at any time since 1952?

The Witness: I don't know. I honestly don't know.

Mr. Sickles: I wonder if it's been established if it was ever adopted?

Trial Examiner: Do you know whether this book of by-laws as it is printed up here, was adopted in 1952 or before? Do you want to read it again?

The Witness: The two little items at the top of the page?

Trial Examiner: At the top of page twelve under the words, "Local By-Laws."

The Witness: The first paragraph, I know was adopted.

Trial Examiner: About when?

The Witness: To the best of my recollection, it must have been around 1943 or 1944, sometime in there. The other paragraph, that one I couldn't remember. I know it has been enforced. I know it has been violated, but as to the actual date of it, I couldn't tell. That is the one numbered transportation.

Trial Examiner: Now, has the rule in the first paragraph

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been changed to your knowledge since it was first adopted?

The Witness: Not to my knowledge.

Mr. Kleiner: Could I ask one more question?

Trial Examiner: Yes.

Mr. Kleiner: Concerning that by-law, Mr. Fisher that you say was adopted in '43 or '44 and which you do not know of your own knowledge to have been formally changed since that time, do you know whether or not it has been enforced since the enactment of the Taft Hartley Act of 1947? Do you know of any instance in which it has been enforced since that time?

The Witness: I know of no instance of any member of Local 47 that has been found or working with anyone without proper credentials.

* * * * *

Trial Examiner: Well, I think it is admissible. I don't say I disagree with your claim or your theory or your presentation of it, but I think that it is admissible as part of the entire picture. I'll receive General Counsel's Fifteen.

(The document heretofore marked General Counsel's Exhibit No. 15 for identification was received in evidence.)

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Q. (By Mr. Pisarski) Mr. Fisher, you gave me this copy of the by-laws on the ninth day—on or about the ninth day of July—December of last year, isn't that correct? A. Sometime in December, I believe.

Q. And, you gave it to me at the Alexander-Stafford Company? A. That's the only time I saw you.

Q. Yes, and at that time you told me it was a copy of the by-laws? A. That was the only copy of any that I had in my possession.

Q. You gave me this copy? A. I must have.

Q. Do you recall a telephone conversation with Mr. Wood on May 20, 1954? A. What time?

Q. Any time during the day. A. Yes, sir.

Q. Do you recall a conversation with Mr. Wood from the Hooker Chemical job at Montague, Michigan that day? A. Yes.

Q. What was that conversation? A. Brother Wood reported that A. J. Schaeffey Company had closed down the

job at Montague and there were a total of approximately twenty-six men looking for work. There were twenty-six men.

Q. What position did Mr. Wood hold with the Union at that time? A. He was President of the Union.

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Q. And, did he hold any other position on the job at Hooker Chemical with the Union? A. He was job steward.

Q. Now, what did he ask you to do? A. I don't recall him asking me to do anything.

Q. Do you recall Mr. Wood saying—asking you if you could get any of the men placed that were being laid off? A. I don't recall him asking that.

Q. Did he ask you if there were any jobs available for the men being laid off? A. I don't recall him asking me that. He might have.

Q. I'll show you an affidavit written by me given to you and you took this affidavit over to Mr. Kleiner and Mr. Kleiner and you went over this affidavit together and you swore to it as evidenced by the Notary Public and I ask you to read the first paragraph and see if it refreshes your memory.

Mr. Kleiner: I think you just asked to read over the first part?

The Witness: He said the first paragraph. I was looking for the whole paragraph. According to what's wrote down here—

Q. (By Mr. Pisarski) Does that refresh your memory? A. Not particularly.

Q. You don't recall whether Mr. Wood asked you to check and see if you could place the men? A. Not necessarily.

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Q. Does the affidavit so state?

Mr. Bryant: May we see the affidavit?

Mr. Pisarski: Sure.

The Witness: That is what is wrote down there.

Q. (By Mr. Pisarski) They approved it when you made it? A. That must have been.

Mr. Bryant: Where do you see in here any request made of him that he try and help the men on the job? Where do you find that?

Q. (By Mr. Pisarski) You took the affidavit to Mr. Kleiner's office after it was prepared?

Mr. Kleiner: I believe Mr. Bryant's question is legitimate. In other words, if—

Mr. Bryant: If it's in there, it's in there. But, I've got a copy of it and I can't find it.

Mr. Pisarski: "The steward and Local President, William Wood called me to see if there was any jobs for the twenty men on the Hooker job." This was on May 20. "I received a call from the contractor on the insulation job at the Hooker Chemical Company that the job was going to shut down." And, I think the words speak for themselves.

Mr. Kleiner: Did you say the first paragraph?

Mr. Pisarski: We have two different affidavits here. I am referring to this one.

Mr. Kleiner: On page three of the affidavit?

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Mr. Pisarski: That's right.

Trial Examiner: Did you get that, Mr. Bryant, referring to page three?

Mr. Bryant: That's right. I still don't find any statement on conversations set forth in this paragraph. This is a typical one of these affidavits which says, "The steward and Local President, William Wood called me to see if there was any jobs for the twenty men on the Hooker job." Now, he is using this to impeach a statement that he asked you to find jobs for him. That was the question that he asked Mr. Fisher. Mr. Fisher said, "No, he didn't ask me to find jobs."

Mr. Pisarski: He said he didn't remember.

Mr. Bryant: Well, he said, "He didn't call to ask me to find jobs."

Mr. Pisarski: I think we are quibbling over words here.

Mr. Kleiner: I think if we are going to take a statement from a witness and he says he can't remember it and then say, "Well, doesn't it say so in this affidavit," well, it doesn't say that. I think that gives an entirely erroneous impression in this record.

Mr. Pisarski: All right.

Q. (By Mr. Pisarski) After your received this 'phone call from Mr. Wood, what did you do? A. Called various contractors to see if I could find places of employment for them, the men who were unemployed.

Q. Who were the men that were unemployed? A. Par-

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don?

Q. Who were the men who were laid off in the Hooker job? A. The asbestos workers.

Q. Members of the Union? A. They were members of Local 47 and traveling mechanics from other locals working on the job.

Q. Who did you call? Do you recall calling the Evert Company? A. I called five or six contractors at that particular time. Some of them I had called just prior to that and found out that they weren't busy. I could have called Evert, I could check into my brief and find out.

Q. You have a memorandum of your calls that day, don't you? A. You have it there, don't you?

Q. I have it here if you want to check the list, sure. You have it in the printed form, don't you? A. That's right. Here it says Evert, Jackson Insulation, Kalamazoo Asbestos—

Mr. Kleiner: Also shows you called Mr. Stafford first?

The Witness: Also shows I called Mr. Stafford first.

Mr. Pisarski: I'll get to it. I can only ask one question at a time on it.

Mr. Kleiner: Take it in the order the affidavit is.

Q. (By Mr. Pisarski) Did you call the Alexander-Stafford Company? A. Yes, sir.

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Q. Who did you speak to? A. Mr. Stafford.

Q. What was the conversation? A. I asked Mr. Stafford if he was in position to use any asbestos workers.

Q. What did Mr. Stafford say? A. He told me that at that particular time it wasn't in his department and Mr. Stafford would contact the manager and he would contact him and let him know of my desire to place some men and have him contact me back.

Q. Did Mr. Sasser call you that day? A. Mr. Sasser called me that day.

Q. What was that conversation? A. Told me he could use two mechanics at the Central Paper job in Muskegon.

Q. Did you give him two men? A. I referred two men over to the job.

Q. What were the names of the men you referred? A. I believe it says on the affidavit.

Q. I know, but Mr. Fisher, the affidavit is not in evidence. A. I'm sorry. Herman Griebel and Bernard Wines.

Q. Are they members of the union? A. They are.

Q. Were they members of the union at the time you referred them? A. They were.

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Q. (By Mr. Pisarski) What was said during the telephone conversation with Mr. Sasser about the Central Paper Company job for the Alexander-Stafford Company in Muskegon, Michigan?

* * * * *

The Witness: If I remember right, he advised me that he was going to Muskegon sometime during the day and that he would call me later in the evening and let me know what the disposition of that job there was. I know that there was difficulty on the job.

Q. (By Mr. Pisarski) Now Mr. Sasser, during this telephone conversation said to you that he would check into the Central Paper job to see if he could put another man on there and he would call you back. Isn't that true? A. I don't remember whether he said he would check into it to see if they could put another man on it or not, but he said he was going up there to see what the situation on the job was.

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Q. (By Mr. Pisarski) Had you given Eley a referral to the Central Paper job prior—immediately prior to May 20? A. Approximately ten days prior.

Q. All right. And, does anybody else in the Local issue referrals besides you? A. Not to my knowledge.

Trial Examiner: Did they, at that time?

The Witness: Not to my knowledge.

Trial Examiner: Well, you would know, wouldn't you?

The Witness: As I say, not to my knowledge. There was nobody else. If there were, they weren't supposed to.

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Q. (By Mr. Pisarski) I show you General Counsel's Exhibit 16 and ask you to identify it. A. This is a referral issued to Robert Eley on the fifth month, tenth day, 1954 by myself, referring him to Alexander—or, it just says "Stafford" on here, which to my knowledge is Alexander-Stafford Corporation, as a mechanic.

Trial Examiner: Do you have any remembrances where—whether you handed that to Mr. Eley and where?

The Witness: Now that, I don't There is a doubt in my

mind as to whether I gave that to Mr. Eley personally or whether I gave it to Mr. Sasser, who oftentimes would be going out to a job or something and for convenience sake, I mean, business is business. We rather feel that we are all gentlemen and can trust ourselves to an extent.

Mr. Pisarski: Would you read that last line to me, the very last line?

Mr. Kleiner: The front of it?

Mr. Pisarski: Yes.

The Witness: Well, my writing isn't so good. In some cases, this looks like Central Paper, expired in thirty days.

Mr. Pisarski: I move for its admission into evidence, your Honor. We will now see what a referral looks like.

Trial Examiner: Is that signed by you, Mr. Fisher?

The Witness: Yes.

Trial Examiner: Your signature?

The Witness: That's right.

Mr. Kleiner: Mr. Fisher, do you recall that you wrote what is on that last line? Did you write that? Is that your handwriting?

The Witness: Yes, I would say it is.

Mr. Kleiner: You would feel that you wrote this last line, that is your normal procedure to write the name of the job?

The Witness: The job or area.

Mr. Kleiner: And, "expires in thirty days," that was the

length of time the Central Paper job was going to last as you understood it?

The Witness: Well, I didn't think the job would last

even that long. But, we renewed referrals every thirty days.

Mr. Kleiner: My question to you is this—

Mr. Pisarski: He has answered the question, your Honor.

Mr. Kleiner: I am trying to identify this. You put "Central Paper, expires in thirty days." You were referring to your estimate of the time possibly, that that job would take? Is that the reason for putting down "Central Paper, expires in thirty days?"

The Witness: No, sir.

Mr. Kleiner: All right. Will you explain to us then for identification, what you meant by that?

The Witness: The Central Paper, if I remember right, was a job that the employer stated Mr. Eley would be working on and the expiration date, as I say, it is like your driver's license, you fill them out. It is the same thing, we renew them every thirty days and in that way we can check to keep a check on the number of men that are working in the territory and their whereabouts. And, we can further check—why, it is only a business procedure and that is the reason that thirty days appears on there.

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Q. Where does the International Trade Agreement come from? A. I get that from the financial secretary and treasurer, too.

Q. Where does he get them from? A. I couldn't answer any better on that than I could on these.

Trial Examiner: What do you refer to as the International Trade Agreement?

Mr. Pisarski: The International is the printed form contract.

Trial Examiner: Called the Agreement with the Master Insulators Association?

Mr. Pisarski: Yes. Do you have a copy in its printed form?

Trial Examiner: Yes.

Q. (By Mr. Pisarski) I am referring to this. A. Like I say, I get them from the secretary of the Union.

Q. Do you know where he gets them from? A. To the best of my knowledge, he gets them from the general office.

Q. What general office are you referring to? A. The general office of the Heat and Frost Insulators.

Q. The International in Washington? A. In Washington.

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Mr. Pisarski: Are you willing to stipulate the Local Union obtains the International Form Trade Agreement from the International Union?

Mr. Sickles: I'm willing to stipulate to that.

Mr. Kleiner: You mean the forms that have been introduced into evidence?

Mr. Pisarski: That is correct.

Mr. Kleiner: I'll stipulate that they do, but not as to its materiality.

Mr. Pisarski: All right. Will you stipulate that the referrals are obtained from the International Union in Washington?

Mr. Sickles: I will stipulate.

Mr. Kleiner: I'll stipulate to that.

Mr. Bryant: I certainly wish we could all—if you gentlemen stipulated to that yesterday, you'd have saved about two hours.

Trial Examiner: Are you joining in the stipulation, Mr. Bryant?

Mr. Bryant: I certainly will.

Trial Examiner: When you are talking about the trade agreement you are talking about the first five pages of the contracts already in evidence, right? Do we have the assent of all of you on that?

Mr. Kleiner: Yes, sir.

Trial Examiner: All right.

Mr. Kleiner: That is just as to the forms, now.

Mr. Pisarski: That is right.

Q. (By Mr. Pisarski) Now, to whom do you give referrals? A. That's a pretty broad question.

Trial Examiner: Are you able to answer?

The Witness: To employees of the Master Insulators who are not members of Local 47.

Q. (By Mr. Pisarski) Now, are referrals given to members of Local 47? A. Occasionally there is an exception where there is one.

Q. But, as a general rule, referrals aren't issued? A. That's right.

Q. Do you remember a conversation with Mr. Eley in the latter part of May or the first part of June in 1954?

A. I've had several conversations with Mr. Eley. I don't know which one you are talking of.

Q. Do you remember a conversation with Mr. Eley in which he asked you for a referral? A. Yes.

Q. And, was that conversation in June? A. I don't remember whether it was in June or whether it was in the last part of May.

Q. Did you give him a referral when he asked you for one? A. No.

Trial Examiner: What year was this?

Mr. Pisarski: 1954.

Trial Examiner: Fifty-four?

Q. (By Mr. Pisarski) What was the reason you didn't give him a referral? A. I had no call for men from the employer.

Q. As a matter of fact, work was pretty scarce at that time, wasn't it? A. To the best of my knowledge.

Q. Some of your members had to travel outside of the jurisdiction of Local 47 to get employment? A. They did.

Q. There was a carpenter strike on which stopped work, isn't that true? A. That, and other things. There was the carpenter strike—

Q. Some of your member traveled to Detroit during this period? A. Some of them, I think, I'm not too sure, but I'm under the impression that some of them did.

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Q. (By Mr. Pisarski) I'll show you General Counsel's Exhibit No. 6 which contains the identical article in the 1954-53 contract—

Mr. Kleiner: What Article is that?

Mr. Pisarski: Article VII.

Q. (By Mr. Pisarski) And, I'll ask you how the number of referrals is determined? A. I don't need that.

Q. I'm sorry.

Trial Examiner: Did you answer that?

The Witness: I haven't yet. I'll have to give it a moment's thought. I'll answer it as best I can. There are so many different angles entered into in the construction business. I would say that the amount of work in the asbestos field at the time of the request would determine quite a bit the number of insulators requested from the employer. All work covers all construction, the amount of work, the amount of men. It is pretty simple to figure that out.

Q. (By Mr. Pisarski) All right. Now, do you determine

how many referrals will be issued, not how men are working, but how many referrals will be issued?

Mr. Kleiner: Is your question, Mr. Pisarski, what is the meaning of this phrase "in the numbers agreed upon?"

Mr. Pisarski: No. I am asking him.

Mr. Kleiner: Didn't he say that would be determined by how many people request employees?

Mr. Pisarski: No, he said the total number of men requested by employers and the amount of jobs. I am asking him, how does he determine or how the number of referrals—I am asking him how is the determination reached as to the number of referrals that are to be given.

Mr. Sickles: By that question are you inferring that there is a certain figure of—

Mr. Pisarski: I don't know. I am asking him.

The Witness: I answered you.

Mr. Pisarski: All right.

The Witness: Okay.

Mr. Pisarski: What is your answer? I'd like to hear it. I don't think you've answered my question.

The Witness: The amount of work and the amount of men required to accomplish a certain amount of work determines the amount of men on the job.

Mr. Pisarski: That is correct.

Q. (By Mr. Pisarski) Now, how is that determination made as to how many men will be issued referrals? A. I don't know how I can answer that any clearer than that. Maybe this is what you want. That when I have exhausted the membership of Local 47 and I still don't have a sufficient amount of men to refer to the employers, then the next step is to try to secure referral mechanics to supply the demand. Now, does that answer your question?

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Mr. Pisarski: Yes. Thank you very much, Mr. Fisher.

Trial Examiner: Now, if there aren't enough jobs to take care of all the members of the union, do you send any referrals to any of those jobs?

The Witness: I wouldn't, no.

Trial Examiner: Does Local 47?

The Witness: Not to my knowledge. I think I got your question right, now. If there weren't enough jobs to go around and we had fellows loafing?

Trial Examiner: If you had members of the union who

were not working and you also had some men who wanted referral cards who were not members of the union.

The Witness: Well, that's a different question. Did you finish it?

Trial Examiner: Yes.

The Witness: Very well.

Trial Examiner: I wanted to be sure that you understood my question. The way I put it was this: Suppose that there are fewer jobs than there are members of the union. Would you send any referral men to any of those

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jobs while union members were not working?

The Witness: I wouldn't.

Trial Examiner: With reference to this Article VII again, you have it there before you still? The testimony thus far, as I recall is that even though the phrase "in the numbers agreed upon," is used in that Article, that in fact no actual agreement as to specific numbers is reached between Local 47 and any of the employers. Now, is that a correct statement of the situation? Do you understand my question.

The Witness: I thought I followed you there.

Trial Examiner: Do you want it read back?

The Witness: Do it again.

Trial Examiner: Read it back.

(Question read.)

The Witness: I am not sure.

Trial Examiner: I'll show you the Article VII again.

Mr. Kleiner: Mr. Martin, could I suggest a question that may be the answer here? Just what is this, how do you operate or what does the numbers agreed upon mean? May be that could be elicited from the witness.

Trial Examiner: Read Article VII. It is very short. Suppose I read it. Article VII of the so-called Master Agreement, page two says, "Local No. 47 will direct non members to the employers in the numbers agreed upon and

shall issue them referral cards for the purpose of identifica-

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tion and classification." Now, is it a fact that you don't—that Local 47 doesn't have any understanding with any specific employer, such as the Alexander Stafford Corporation, that Local 47 will issue or will grant referral cards to so many men to work at that company at a given time?

The Witness: While members of Local 47 are unemployed?

Trial Examiner: Well, at any time. I'm trying to find out what this Article actually means, you see, the practice under it.

The Witness: Well, if you ask me that, maybe I can explain it.

Trial Examiner: All right, explain it.

The Witness: I think the provision is placed in there to take care of periods where there is an abnormal amount of work and it does come seasonally. If any of you people are familiar, you yourself, with construction, in the fall and in the mid-spring usually there is quite a crop of work that comes up and, there is one or two things. You either carry a membership in your local to take care of the peak and let them loaf half of the time, or you are going to take an average and there will be a certain time when you will have to use a cushion there to take up the peak and this particular Article in here is the agreement that we signed with the Master Insulators that—when we can't supply labor or bonifide asbestos workers, that we will endeavor to secure the number of men that is necessary and refer them

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to them to complete their contracts that they have contracted for. Is that—it wouldn't necessarily mean that there would be any specific number, for instance, we'll say if Mr. Stafford would call me for ten men tomorrow morning and maybe I would have five members of Local 47

available and I would make every effort to obtain five more members.

Trial Examiner: You don't mean members, you mean employees?

The Witness: Well, employees. I'd try to get members of Local 47 if I could. That is what I'm paid for.

Trial Examiner: I understand.

The Witness: Then I would go to the next best thing. I would try to find men that had some experience along this line of insulation to refer over to Mr. Stafford to supplement his crew to get his work done and if he said ten, maybe we would quibble around a little bit and I would say, "could you get by with a little less." Maybe I'll have some more men a little later on or something like that and maybe we would agree at six or seven. But, whatever the amount of men actually required to do the job would be the number agreed upon and it wouldn't necessarily have to be non members. I think that is included in the agreement there, too, to bring out that we would go to an effort to take care of the trade, rather than just for the members and ourselves. We would make an effort to secure men to do the insulation work in our given territory.

Trial Examiner: While I'm asking, I've got one other

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question I have been wanting to ask for a half an hour. Page one Article I of the Master Agreement says at the bottom of the Article, "outside of chartered territory the nearest Local Union is to be given first preference in the supplying of labor in excess of one mechanic and one improver, who shall conform to the working rules and Trade Agreement of the Local Union under whose jurisdiction they work." Now, my question is, with reference to 47, that is Local 47, as to what working rules and trade agreement of Local 47 there are, what does that refer to with reference to 47, or to ask it in another way, does Local 47 have any working rules or any trade agreement to your knowl-

edge, other than what is already in evidence, namely, the constitution and by-laws of the International and General Counsel's 15?

Mr. Kleiner: I object to the inclusion of the Constitution and By-Laws of the International. The assumption is that it is the working rules of the Local.

Trial Examiner: That may be a good objection.

The Witness: What this more or less sets out—

Trial Examiner: I'll withdraw that portion of my question.

Mr. Kleiner: All right.

The Witness: You want a basic demonstration of the working of this particular phrase here?

Trial Examiner: Yes. I want to know what is covered. What I want to know is whether Local 47 has any working rules or trade agreement that isn't already in evidence and what's already in evidence are the various Master Agreements and supplements, and General Counsel's 15.

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The Witness: I would say that the working rules that we have, are nothing other than a code of workmanship that appears on the back of the International—that's right.

Mr. Kleiner: I guess that answers my objection.

The Witness: There is a standard code of workmanship right in the back.

Trial Examiner: Let's see if you can find it. Oh, I see, beginning on page 54, the preface and then continuing on from there for a few pages at least.

The Witness: Covering the methods of the application of the material. The rest of this here, we can only—one of our contractors in that territory can send a mechanic and a helper—

Mr. Pisarski: Speak a little louder, please.

The Witness: Into another Local Union's territory and from there on the other Local Union will supply the men to fill the needs. If they go into the other Local, if they

have any other jurisdictions, why there are differences over the United States, different awards of materials and practices in different areas that maybe don't exist in other areas.

Trial Examiner: That answers my question.

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Q. All right. Now you say, Mr. Fisher, that you do not give a referral to an employee or worker when he asks for it. When do you give referrals? A. If an employer has seen fit to employ an individual other than a member of

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Local 47, I will issue a referral at the employer's request or as soon as I have knowledge that the individual is working.

Q. Are there any other times that you issue referrals?

A. When I have a call for employees from the employer greater than the amount of Local Union manpower and I am able to secure someone who will agree to go over and work for him, then I issue referrals to people in the numbers agreed upon, refer to the employer.

Q. Then you have two times then when you issue referrals, one, when you are finding a man who is not a member of the union and two, when the employer hires somebody and requests a referral for him or you find him working on the job and you give him a referral. Right? A. Yes, sir.

Q. Now, what is the purpose of the referral slip when you are sending a man over to the employer? Why do you give him that? A. It acts as an introduction to the employer and also serves as an identification to the other crafts on the particular job that he will go on that he has been referred there by Local Union 47.

Q. And, what is the purpose of giving it to him when he is on the job or when the employer requests it after he has hired him himself? A. Then that is for the purpose of identification to the other craftsmen on the job.

Q. You mean jurisdictional problems, is that what you are talking about? A. It serves to alleviate quite a few jurisdictional problems where members of different crafts would be working in somebody else's trade, if you had a building trades inspector on the job that goes around and checks your credentials.

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Q. (By Mr. Kleiner) Did you ever receive any requests from any employer after May 20, 1954 for a referral for Mr. Robert Eley?

Trial Examiner: What was that question? Did he receive such a request?

Mr. Kleiner: Any time after May 20, 1954 did any employer ask you for a referral for Robert Eley?

The Witness: I don't remember.

Q. (By Mr. Kleiner) You don't remember? A. I don't remember.

Q. You mean you don't remember that any did? A. I don't remember that any did.

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Q. Well, you did give Robert Eley a referral in July of this year, did you not? A. Yes, sir.

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Q. (By Mr. Kleiner) Was it at the request of an employer? A. No.

Q. You testified earlier that you gave referrals either at the request of an employer or when you found the man working on the job. Does that mean that you gave Mr. Eley

this referral because you found him working on the job then? A. That's right.

Q. Did you go out to this particular job on July 7, specifically to give Mr. Eley a referral? A. That's right.

Q. Did you know he was there? A. I had been informed he was there. Until I saw him, I didn't know it.

Q. Who informed you of that, if you remember? A. I think Brother Kranenberg.

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Q. (By Mr. Kleiner) And, your reason for not renewing Mr. Eley's referral when he requested it was what, did you say? A. I had no call for men from any of the employers.

Q. Was Mr. Eley working at that time? A. Not to my knowledge.

Q. You neither had a call for men nor did you have any indication that he was working at that time? A. No.

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Q. Let me ask you this. Under your contract, Mr. Fisher, there is a provision in your contract as I read it, that requires that members, I think is the wording, who travel certain distances are required to be paid certain amounts per day. Are you familiar with the wording on that? A. Yes.

Q. Does that apply only to members or to all employees in this operation? A. It applies to all employees employed as asbestos workers under our jurisdiction.

Q. Under the terms, working under the terms of the contract? A. Under the terms of the current trade agreement. There is no discrimination.

Q. Is that clearly understood and intended by you and the Association Members, as far as you know? A. That's right.

Q. Have you had discussions with them to the effect that non members as well as members must receive that amount?

A. I try to see that it is enforced in all instances.

Q. Why are you interested in enforcing it for non members?

Mr. Pisarski: I object.

Trial Examiner: Overruled. You may answer.

The Witness: Well, primarily to see that there is no discrimination against the members of Local 47, and secondarily to see that there would be no cause for discrimination on the part of the party who wasn't receiving as much as

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somebody else was.

Q. (By Mr. Kleiner) How would it be discrimination against your members? How would that work? A. Well, we'll say that we've got a job, as an example, and if our agreement calls for, which it does call for six dollars a day subsistence when you are working out of town, which our members would consistently get, and if some man was referred out there that didn't belong and the employer tried to get away without paying his subsistence, naturally he would be getting the fellow for six dollars a day less money than he would our fellows, and the first thing you know, he would have all the fellows working there for six dollars a day less. So, that is rather important that everyone receive the same amount of money for the same operation.

Q. In other words, the employer then has a right to hire Union or non Union members if he decides himself. Is that what you are saying? A. He has the privilege if he so desires.

Q. And, —but if he didn't pay these non members the same as your men, he might start hiring all non union members. Is that it? A. If he could get by without it, probably some of them might. I wouldn't say all of them would. This is purely an assumption, because we have been very

careful to see that the conditions of the agreement are lived

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up to in all respects.

Q. In other words, then, you feel you must have the same conditions for all employees in order to protect your members from hiring discrimination by the employer?

A. That's right. I think the Davis Act has something to do with a given wage scale in given areas.

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Redirect Examination

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Q. If an employer asks you for ten men, who would determine how many card men would be sent pursuant to that request and how many referral men would be sent? A. The ten men?

Q. Yes, or any number. A. I haven't had a call for ten men for quite a while.

Q. I use that as an example, Mr. Fisher. Say, five. A. Who would determine who would be sent?

Q. Yes, that's correct. A. Well, if they called me for them, I would determine.

Q. And, you would determine how many of them would be cardmen and how many of them would be referral men, isn't that correct? A. If it was possible for me to.

Q. And, one of your obligations as business agent for Local 47 is to see that as many members are working as possible? A. It's my job to see that there is work for them.

Q. All right, and part of your duties would be to see, to give preference to these union men. They pay your salary?

A. I believe that would be right.

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ROBERT ELEY

a witness called by and on behalf of the General Council, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Pisarski) What is your occupation? A. Insulation mechanic.

Q. And, when did you begin working as an insulation mechanic? A. Approximately seven years ago.

Trial Examiner: Please keep your voice up.

Mr. Pisarski: Keep your voice up, Mr. Eley.

The Witness: Seven years ago.

Q. (By Mr. Pisarski) What were some of the companies

you worked for as an insulator? A. Jackson Insulation, Kalamazoo Asbestos, Armstrong Cork, Alexander Stafford.

Q. And, how did you get these jobs? A. I was referred to these jobs by the business agent.

Trial Examiner: Of Local 47?

The Witness: Pardon?

Trial Examiner: Of Local 47?

The Witness: Of Local 47.

Q. (By Mr. Pisarski) When were you hired by the Alexander-Stafford Company? A. Nineteenth of August, 1950.

Q. And, how were you hired? A. Mr. Richard Glass at that time was business agent and he called me by 'phone and told me to report to Alexander-Stafford and he would have a job for me.

Q. Did you report to the Alexander-Stafford Company? A. Yes.

Q. And, who did you report to? A. Mr. Ralph Sasser.

Q. And, what was that conversation?

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A. Mr. Sasser asked to see my mechanic's card, which I didn't have. I told him I wasn't a mechanic, a member, and he asked me to see my referral. I told him I didn't have one at present, that Mr. Glass would send it by mail and Mr. Glass told me that it would be all right if I went to work until the referral came and then I was to show it to Mr. Sasser or the foreman on the job.

Trial Examiner: What did Mr. Sasser say to that?

The Witness? Well, Mr. Sasser said then, "As long as you have a referral in your pocket, you can work," but he says, "Even though you have a referral in your pocket and a cardman is available out of work, that cardman will have the job in preference to referral men."

Q. (By Mr. Pisarski) Did he tell you to report to anybody? A. Yes. I was to report to Mr. Kranenberg, who was the foreman at that time at the Wurzburg Store.

Q. And, what did he tell you about Mr. —what was said by Mr. Kranenberg in that conversation? A. Well, Mr. Sasser told me he was the foreman on that job and I would take orders from him and he would tell me what to do.

Q. Now, did you report to the Wurzburg Store? A. Yes.

Q. Who did you report to? A. Mr. Kranenberg.

Q. What happened when you reported to Mr. Kranenberg? A. Well, the same as on any job, the foreman would always ask to see your referral and I told him then the same as I did Mr. Sasser, that I didn't have it, but Dick was sending it in the mail, it would be there in a couple of days.

Q. What did Mr. Sasser do then? I mean, Mr. Kranenberg do then? A. Well, Mr. Kranenberg said that would be all right. It had happened before and he said, "I'll show you what you can do." So, he took me over and showed me the job I was to do and I went to work.

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Q. All right. Now, are you a member of another Local—are you a member of any union? A. Yes.

Q. What union are you a member of? A. Operators, Plasterers and Cement Finishers Local 115.

Q. Are you a member of Local 47? A. No, I'm not.

Trial Examiner: 147?

Mr. Pisarski: No, 47, Local 47 of the Asbestos Workers.

Q. (By Mr. Pisarski) Are you a member of Local 47 of the Asbestos Workers? A. No.

Q. Who else would give you the referrals on the job besides business agent Fisher? A. Well, sometimes they were sent in the mail to the employer and the employer would issue it to the men or he would give it to the foreman on the job and the foreman would distribute the referrals to the referral men.

Trial Examiner: Were you a member of this other local of the Plasterers Union in August, 1950?

The Witness: Yes.

Trial Examiner: Have you at all times since?

The Witness: Pardon?

Trial Examiner: Have you been at all times since?

The Witness: Yes.

Q. (By Mr. Pisarski) Are you a paid up member now? A. Yes, I am.

Trial Examiner: Is that a Grand Rapids Local or some other?

The Witness: Yes, that's Local 115 in Grand Rapids.

Trial Examiner: And, what is the full name of that Union again?

The Witness: Operators, Plasterers and Cement Finishers Organization.

Q. (By Mr. Pisarski) Do you have your membership book with you? A. No, I do not.

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Q. (By Mr. Pisarski) Have you ever been asked by any member of the Alexander-Stafford Company to see your referral? A. Yes.

Q. Who asked you? A. Ed Kranenberg.

Q. When did he ask you these things? These questions? A. Well, he would ask me about it first when I came on the job. That would be when I first reported to work. He would ask to see the referral, and other times he would come and ask to see our referrals to see that we were up to date on these referrals. The reason for that would be—

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Q. (By Mr. Pisarski) Can you fix any particular date during which this conversation took place? A. No, I

couldn't fix the exact dates.

Q. Would these conversations have taken place at least five times during the course of your employment? A. Yes.

Q. Can you fix these conversations as to any particular job? A. One job, yes.

Q. What job was that? A. The Wurzburg job.

Q. And, what was said to you?

Trial Examiner: That was the first job you went to work on?

The Witness: Yes.

Trial Examiner: How long did you continue in that job, about?

The Witness: Well, I can't say exactly how long. It was, I know, at least four months. It might have been more, but

to set an exact time and date that I worked on that special job, I couldn't.

Trial Examiner: Now, you recall one specific conversation you had with Mr. Kranenberg on this subject during that period of time?

The Witness: Yes.

Trial Examiner: All right, now give us that conversation. You have an objection, if you want it, Mr. Bryant.

The Witness: That was the time there were other men brought in on this job at Wurzburg's from other jobs and he wanted to make sure that we had our referrals up to date, because he said, "If you are not up to date, the Union

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members of Local 47 aren't allowed to work with non union members or members that don't have a referral." Otherwise, they would be fined.

Trial Examiner: What?

The Witness: The Union members would be fined.

Trial Examiner: F-i-r-e-d or f-i-n-e-d?

The Witness: Fined.

Mr. Kleiner: I ask that be stricken, what happens to Union members internally, the workings, internal workings of the Union are not material to this case.

Trial Examiner: Overruled.

Q. (By Mr. Pisarski) All right. Now, was this conversation repeated on other occasions during the course of your employment? A. Yes, but I can't specifically set the date.

Q. Now, about how many times were you asked by Mr. Kranenberg? A. That, I don't know.

Q. Could you estimate a number to the best of your recollection? A. Possibly three, four times.

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Q. (By Mr. Pisarski) Now, what was the — you stated that you didn't work a week in January, 1954. Is that true? A. That's true.

Q. All right. What happened that you didn't work that week? A. Why, Mr. Sasser came on the job and told me that the Local was putting their cardmen in and that he

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would have to lay me off. He said it might not be what they claim it is. At that time they were going to do away with all permit men and use all their mechanics. So, he said "when things smooth out, I'll give you a call and you can come back to work."

Mr. Kleiner: I want you to finish.

Trial Examiner: Did you finish?

The Witness: Which he did, and in about a week's time he called me and I went back to work.

Trial Examiner: When you went back, did you get a new referral card?

The Witness: No, I still had my old referral.

Mr. Kleiner: Could we have that question prior to that long answer read back and the answer?

Trial Examiner: Yes, please do.

(Question and answer read.)

Trial Examiner: Did he say to smooth it out? I think I had that a little differently.

The Witness: Yes, he said, "When it has smoothed out." That would mean that the Local 47 men coming into town that way, and then he would call me and put me back to work.

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Q. (By Mr. Pisarski) After January, 1954, how did you obtain your referrals? A. In February, March, April and May, I was required to go to the Union Hall of the Asbestos Workers Local 47 in Lansing and pick them up.

Q. And, where do you live? A. Grandville, Michigan.

Q. What is the distance between Grandville, Michigan and Lansing, Michigan? A. Sixty-seven miles.

Q. And, who were you told—who told you that you had to go to Lansing to pick up your referral? A. Bernie McWilliams, a member at that time. He had come back from the January meeting and told me that if I wanted a referral from now on, I would have to go to the Union Hall and pick it up.

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Mr. Kleiner: Was this in 1954?

The Witness: Yes.

Q. (By Mr. Pisarski) When you went to the Union Hall to pick up your February referral, who gave you the referral? A. Mr. Fisher.

Q. What did Mr. Fisher say to you when he gave you the referral? A. Well, he would still ask me if I was paid up in my present trade, which I was.

Q. What conversation did you have with Mr. Fisher about where you would have to get your referral? A. At that night, that first night that I went to get my referral, he said, "You will pick them up here from now on." That is, at the hall of Local 47.

Trial Examiner: How often did you do that? How often?

The Witness: Every month.

Q. (By Mr. Pisarski) Specifically, what months? A. It was February, March, April and May.

Q. Now, what happened on May 20, 1954? A. I was working at Central Paper in Muskegon and Mr. Sasser came over there in the afternoon and told me that the men at the Montague job were being fired, that there would be a crowd of men out of work. He didn't specify how many, and he said, "It might be a good idea if you didn't show up on the job tomorrow." He says, "You know, we have an agreement with the Local to keep all our cardmen in work," and he said if they came down here on the job looking it

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over and saw a referral man working and them not, there would be some trouble.

Trial Examiner: Who said this?

The Witness: Mr. Sasser.

Q. (By Mr. Pisarski) Was anyone else present in this conversation? A. Yes, Ed Kranenberg.

Q. What did Mr. Kranenberg say? A. Ed Kranenberg agreed with Mr. Sasser and told me I hadn't better show up to work the following day and he said also, "You might as well take your tools home because," he says, "you probably won't be coming back to this job." He said, "Bernie Wines lives here in Muskegon and if there is any work in Muskegon, Bernie Wines will get it." He is a Local 47 member. So, he said, "it would be a good idea if you didn't show up or come back."

Q. Did Mr. Kranenberg say anything else? A. No, he left at that time.

Q. After Mr. Kranenberg left, was there any further conversation with Mr. Sasser? A. Yes. I stood there talking and he told me, he said, "You know, there's an awful lot of work in the State of Michigan and," he said, "it hadn't ought to take a week or ten days at the most to place these men," and he says, "we have had an agreement with the Local to keep their men busy," so he says, "until they have their men placed on jobs, I can't put you to work, I can't

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keep you working," He said, "We've got to play ball with the Union," that they're cooperative. And, he said, "It would be the best thing if you would wait until this blowed over and at that time I'll call you back to work."

Trial Examiner: Are you through with that answer?

The Witness: Yes.

Trial Examiner: Please read that last question and answer.

(Question and answer read.)

Q. (By Mr. Pisarski) After your first conversation with

Mr. Sasser, what did you do? A. I started to pick up my tools, getting ready to go home.

Q. What time of the day was this conversation? A. Around three thirty.

Q. Your quitting time? A. We was close to quitting time.

Trial Examiner: When was quitting time?

The Witness: Four thirty.

Q. (By Mr. Pisarski) Now, after you packed your tools, did you speak to Mr. Kranenberg? A. Yes. I was getting my tools ready and I told Mr. Kranenberg being as I was laid off and wasn't going to come back to work, I might as well go fishing the next day.

Q. What did Mr. Kranenberg say? A. He said that would be a fine idea.

Trial Examiner: Well, did you leave before four thirty that day?

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The Witness: I don't believe I did. It might have been maybe five minutes or something like that, but I don't believe I left until four-thirty.

Trial Examiner: Did you get paid for a full day's work that day?

The Witness: Yes, I did.

Trial Examiner: Right through four-thirty?

The Witness: Yes.

Q. (By Mr. Pisarski) Now, when did you apply for work after May 20 at the Alexander-Stafford Company? A. The following week on a Saturday.

Q. And, where did you make this application? A. Stafford's shop.

Q. To whom did you make this application? A. Mr. Sasser.

Q. What was that conversation? A. Well, I asked Mr. Sasser at that time if the men were placed, the Local men

were placed on jobs and if I could go back to work, and Mr. Sasser said no, that the cardmen that were out hadn't been placed and he said, "Until that time that they get them placed, I can't put you back to work." Well, at that time I showed him my referral which was good until the tenth of June, but he said, "That isn't any good any more. You'll have to get another new one issued from Mr. Fisher before I can put you back to work."

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Q. I show you General Counsel's Exhibit No. 16 and ask you to identify it. A. That is the last referral I got from Local 47.

Q. Is that the referral you showed to Mr. Sasser during this conversation? A. Yes, it is.

Q. Did Mr. Sasser tell you when he would call you in? A. Well, he said he couldn't call me back until all the men had been placed on jobs.

Q. Did he tell you how long that would take? A. He said it would not take over another week at the most. He said, "There is an awful lot of work in the State of Michigan and it hadn't ought to take them long to get back on the job."

Q. When did you apply for work again at the Alexander-Stafford Company? A. June 3rd.

Trial Examiner: What year?

The Witness: June 3rd of 1954.

Q. (By Mr. Pisarski) And, to whom did you make this application? A. Mr. Sasser.

Q. Where did you make the application? A. The Stafford shop.

Q. What was the conversation? A. Well, I approached him again about going back to work, how soon it would be

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and he told me that the men were still out, that is the card members, were still out and he didn't know then at what

time they would be back before he could put me back to work. He said, "As soon as things break, I'll let you know and you can come back to work."

Q. Now, did you speak to Mr. Fisher the same day? A. Yes, I did.

Q. And, where did you speak to Mr. Fisher? A. At Stafford's, at the shop.

Q. Now, did you speak to Mr. Fisher after you spoke to Mr. Sasser? A. Yes, I did.

Q. What was that conversation? A. Well, I asked Mr. Fisher if I could get a referral to go back to work, that I had just talked to Mr. Sasser and he told me they were in need of men and they couldn't get them and I said, "Why can't I get my referral back and go back to work?" Well, at that time Mr. Fisher told me that they were not going to issue any more referrals to anybody, that they were going to handle the work themselves.

Q. Did you speak to Mr. Fisher again? A. Yes, on June 8, 1954.

Q. And, where did you speak to Mr. Fisher? A. At Stafford's shop.

Q. What was that conversation? A. I approached him

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again about getting a new referral so I could go back to work and he told me at that meeting, at that conversation that they weren't going to issue a referral to any man who had already previously had one, and I told him that I thought that was funny that they wouldn't issue a referral to a man that had experience rather than to give a referral to the new men that didn't have experience. So I said, "Well, in that case if you flatly refuse to give me a referral, I guess I'll have to go to a lawyer and see what can be done about getting my job back."

Q. Did you speak to Mr. Fisher again? A. Yes, it was either the latter part of June or the first of July.

Q. Where was that conversation? A. That was in front of Stafford's shop.

Q. It wasn't in the shop? A. Not at the present. It occurred in the shop afterwards.

Q. And, what was the conversation? A. Well, Mr. Fisher approached me and he said, "Well, how are you doing?"

Trial Examiner: Is this still '54?

The Witness: Yes, sir. I said, "I'm not doing anything, but I would like to go back to work, and there seems to be a demand for men here at Stafford's and why can't I get a referral?" Well, he says, "After that letter that you sent to the International making an ass of yourself and the lies

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that was put in there," he says, "I don't think the men would work with you," but he says, "I will give you a referral for two months if you will drop the charges against the Local." And, I refused. If I had accepted the referral for two months and dropped the charges, at the end of two months he could have pulled that permit and referral —

Mr Kleiner: I'm going to object to this answer as being not responsive.

Trial Examiner: You didn't say this to him, this last, you just explained to me. Right?

Mr. Pisarski: No, this is the conversation.

The Witness: This is the conversation between Mr. Fisher and I.

Mr. Kleiner: Is this what you told Mr. Fisher?

The Witness: Yes.

Trial Examiner: Continue.

The Witness: I told Mr. Fisher I would not accept the referral for two months. If I did, at the end of two months he could take my referral, I would be out of a job and I would be out of the charges, too.

Q. (By Mr. Pisarski) Had you filed charges at that time?
A. No, I hadn't.

Q. What charges was Mr. Fisher referring to? A. I don't know, unless it was the time I was talking to him on June 8. I told him then I would have to see a lawyer to get

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my job back. That would be the only charge.

Q. When were charges filed?

Trial Examiner: They are in the record.

Q. (By Mr. Pisarski) All right. Have you ever applied for work to anyone else at the Alexander Stafford Company? A. Yes, I did.

Q. And, to whom did you apply for work? A. Mr. Tom Stafford.

Q. When did you apply for work to Mr. Stafford? A. It was sometime in October.

Q. Of what year? A. In 1954.

Q. And, where was this conversation? A. In his office.

Q. What was the conversation? A. Well, I had went down there to pay a bill that I owned him on material and then he called me in his office and we sat there and talked and I asked him then if I couldn't get back to work, if he needed men. He said, "No, at the present we don't need any men at all." He said, "We have the agreement with the International or the Local and we are cooperative and they cooperate with us," and he said, "any time I need men I just call Local 47 and they send them right over." He says, "I don't need any men at all." He also brought the subject up about the letter that I had written the International that I had done a very dumb thing. He says, "You

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know, you made an awful lot of enemies by sending that letter which now days," he says, "it's better to have friends." I agreed with Mr. Stafford on that point.

Mr. Kleiner: Well, I think again, you say you agreed or did you say you now agree?

The Witness: I agreed with Mr. Stafford on that point of friends.

Trial Examiner: You told him that in the conversation?

The Witness: Yes, I told him I would rather have friends any day as enemies and I thought that I had tried to be friends with the men that I worked with, and I had never had any quarrels with them or anything, but he didn't give me a job.

Mr. Pisarski: I have no other questions.

Trial Examiner: I think we can proceed on cross in the same order, unless there is some objection to that same order?

Mr. Bryant: I think that would be proper.

Cross Examination

Q. (By Mr. Bryant) Mr. Eley, according to your testimony, the first reaction you got on going to work in this profession at the Alexander-Stafford Corporation was obtained from Mr. Sasser and implanted in your mind the idea you were subject to lose your job at any time if a card-man was out of work and came looking for work. That is what you began to believe when you went on the job? A.

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Yes, sir.

Q. Several times during your employment you were asked for your referral to see if it was up to date. Is that correct? A. Yes.

Q. And, you had to obtain, you say you had to obtain a renewal each month? A. That's right.

Q. As a matter of fact, you did obtain one each month without any difficulty, is that correct? A. Yes.

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Q. (By Mr. Bryant) Did you make a written application for admission to membership into this Union? A. No, I did not make a written application.

Q. Did you appear at a meeting and make a formal application? A. Before I had wrote the letter to Mr. Fisher asking for a mechanic's application. He wrote back a letter and told me I would have to appear before the Executive Board. The Executive Board would have to meet on it and okay it.

Q. Did you make such an appearance? A. Yes, I did.

Q. And, isn't it a fact that at that time you were turned down? A. At that time, I was not sure, because he told me that they would have to have a meeting between the

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contractors and the Executive Board of Local 47 to determine how men each contractor was needing.

Trial Examiner: Who told you that?

The Witness: Bud Fisher.

Trial Examiner: Bud Fisher, is that Virgil Fisher?

The Witness: Virgil Fisher.

Q. (By Mr. Bryant) After May 20, 1954 and prior to July 1, 1954, approximately how many times were you at the offices, down town offices of the Alexander-Stafford Corporation? A. Three times.

Q. Three times only. On one of these occasions you stated that you made an application for employment to Mr. Sasser and he refused you? A. The following Saturday after I was laid off.

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Q. You stated that you had two conversations with Mr. Sasser in the first part of June. I think one was June 3rd and one was June 8th? A. Yes.

Q. And, that in one event you said that you were denied work because the cardmen didn't have jobs and you couldn't be put back to work. Isn't that right? A. He told me the

card men replaced—the referral men would not be put on the job.

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Q. (By Mr. Kleiner) Mr. Eley, you testified you were laid off a week January, 1954 and were told by, I believe you testified you were told by Mr. Sasser that the Union required you to be laid off, they had cardmen coming in. Is that what you said? A. He told me that cardmen were being sent in from Grand Rapids to be placed all over.

Q. For that reason you were laid off for a week, you say? A. That is what he told me.

Q. Was it the first week in January? A. I don't know exactly what week it was, but it was in January.

Q. You did no work? A. I did no work.

Q. And, you didn't receive any pay? A. And, no pay.

Q. You realize you are under oath, do you not? A. I do.

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Q. Let's go back to this May 20, 1954, witness. Mr.

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Kranenberg and the McWilliams boys were working on the Central Paper job, weren't they? A. They were.

Q. And, you were working on a different part of the job the week before, also at Central Paper, but not the same work Mr. Kranenberg and the McWilliams boys were working on? A. I had worked before they came over on different jobs in the plant.

Q. What type of work were you doing before they came over? A. I was working on repair work and new work.

Q. What kind of work were they doing when you came over? A. What kind of work was I doing?

Q. What were they doing when you came over? What kind of a job did they come over to do? A. When they came over, they insulated the, I think they call them driers.

Q. Applying insulation to the driers? A. Yes, sir.

Q. And, the lathers were working on that building at the same time? A. Yes, they were.

Q. And, you and everybody else on that job knew that the lathers were about to go on strike, did you not?

A. They were talking, but they didn't set no definite day.

Q. But by May 20 you knew they were going out the next

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day? A. No, I didn't know they were going out the next day.

Q. You didn't discuss that with Mr. Kranenberg and the McWilliams boys? A. No, I did not.

Q. All right, and now on the afternoon of May 20th you were all working on the job? A. Pardon?

Q. You were all working on this job covering insulation? A. What time?

Q. On May 20th in the afternoon. You were all up there working when Mr. Sasser arrived? A. Yes.

Q. Whereabouts were you working? A. Well, I was applying asbestos to one of his units.

Q. You were at least thirty feet away from Mr. Kranenberg, weren't you? A. No, I wouldn't say thirty feet.

Q. How far would you say? A. Oh, possibly ten feet.

Q. And, Mr. Sasser came up and walked over and talked to you, did he? A. He did.

Q. Mr. Kranenberg was not there in that conference there with you at that time, was he? A. He was there at the time that Mr. Sasser was talking with him.

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Q. Did Mr. Kranenberg walk over to where you were? A. Yes.

Q. Or, did you walk back over to where Mr. Kranenberg was? A. I did not.

Q. So, when Mr. Sasser walked up to you Mr. Kranenberg walked over? A. Yes.

Q. For your entire time of your conversation with Mr. Sasser? A. No, no he did not.

Q. So you had some discussion with Mr. Sasser before Mr. Kranenberg got there? A. No, I did not.

Q. What did you do, just stand there and look at each other? A. Well, he just would say, "Hi," and that was it. There was no conversation.

Q. No conversation. Well, how long was it after Mr. Sasser got over to where you were that Mr. Kranenberg came over? A. He came over immediately.

Q. Well then, he was there the whole time? A. Mr. Sasser was walking up and Mr. Kranenberg came in.

Q. Now, you tell me what Mr. Sasser said to you, the first thing he said to you. A. The first word? "Hi, Bob."

Q. What did you say? A. I said, "Hi."

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Q. Then what did Mr. Sasser say? A. And, he said that the men were getting fired at the Montague job and that I would—I was not to appear the next day on the job.

Q. He said those words, "the men are being fired at the Montague job and you're not to appear here tomorrow," is that what he said? A. That's right.

Q. Did Mr. Kranenberg say anything at that time? A. Yes. He agreed with me—

Q. Don't tell me in generalities. Tell me what he said. A. He said that would be a good idea not to show up tomorrow, because Bernie Wines lives in Muskegon and he'll be on the job looking it over.

Q. That is what Mr. Kranenberg told you? A. Yes.

Q. In Mr. Sasser's presence? A. Yes.

Q. All right. What did you say when they said that? A. I didn't have nothing to say.

Q. You didn't say anything? A. No, I did not.

Q. And, did you ask where you should go to report the

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next day? A. There was no use.

Q. Well, answer my question. Did you ask where you should report the next day? A. No, I did not.

Q. And, you went on home then? A. Not right then, no.

Q. Did you leave Mr. Sasser and Mr. Kranenberg? A. Not at that time.

Q. Did you continue applying asbestos? A. No, I did not. I got my tools, cleaned them up and took them home.

Q. Now, has what you told me been all the conversation? A. Well, as near as I can remember.

Q. Just the way you've given it to me now? A. That's right.

Q. You didn't say any more, they didn't say any more to you than what you've just told? A. I didn't say a thing.

Q. Earlier you said you were told to take your tools home? A. Right.

Q. When were you told that? A. When Mr. Kranenberg and Mr. Sasser was there in my presence.

Q. When did they tell you that, before or after this conversation? A. At the same time.

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Q. (By Mr. Kleiner) Now, did Mr. Sasser tell you defi-

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nately on the Wurzburg job, definitely in 1950 that you were going to be replaced by a cardman? A. Not in those words. He told me that at any time, even though I had a referral and there was a cardman available and was sent in to Alexander's shop, that he would replace me on the job.

Q. Did he tell you the reason for that as to whether or not it was because he was better qualified to do the work than you were or any other reason? A. He told me that the agreement that they had with Local 47 is that they will keep the cardmen busy rather than referral men.

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Q. (By Mr. Kleiner) After this discussion that you said you had at which Mr. Sasser and Mr. Kranenberg were supposed to be present on the Central Paper job, did Mr. Kranenberg walk away and you continue to talk to Sasser, or did Mr. Sasser leave the job and you continued to talk to Kranenberg? A. Mr. Kranenberg left and I continued to talk with Mr. Sasser.

Q. Now, you say on June 3rd Mr. Sasser told you that the cardmen were still out and he didn't know how long it would be before you could go back to work. Is that statement— A. That's true.

Q. A few minutes later, or a short time later you saw Mr. Fisher? A. Yes.

Q. Why did you tell Mr. Fisher that Sasser had told you that he needed men? A. Well, they were in demand of men

and I thought maybe he would issue me a referral and I could take my job back.

Q. Even though you say Sasser had just finished telling you that there were still cardmen without jobs? A. Yes.

Q. Did Mr. Sasser tell you why he didn't hire the cardman that needed work? A. They would not hire them. They didn't want them in the shop, they were no good.

Q. Is that what Mr. Sasser told you? Is that what Mr. Sasser told you? A. He said they wouldn't have them in the shop, that they were not dependable workers.

Q. Do I understand you to be telling me that Mr. Sasser told you on that date then that there were union men out of work, but he wouldn't hire those union men, but that he would also hire you as long as those union men didn't have work, even though he wouldn't hire them? That's what he told you? A. Yes.

Q. Then you turned around and told Mr. Fisher that Mr. Sasser needs men and give me a referral? A. I asked him for a referral.

Q. You asked him for a referral. Did you ever ask Mr. Sasser to ask Mr. Fisher for a referral to refer you to him?

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A. No, I did not.

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Q. (By Mr. Kleiner) I think you said, Mr. Eley when I asked you if you—if wasn't it true that you knew that the Union issued referrals only when men were working. You said you had got the referral when you weren't working. I said that was then when you were referred to the employer for a job and you said yes. And, I said, you knew that the Union only issued those referrals and referred you when they had a request from the employer. You understood that, didn't you? A. Yes.

Q. All right. Now, in this particular case on June 3rd, you were neither working for Alexander Stafford, I think you testified, nor did you know of any request from Alexander Stafford to the Union for men, those two times that you testified you knew referrals were given and the two times that Mr. Fisher testified. Now, since neither one of those things had happened to your knowledge, you were neither working for Alexander-Stafford nor had the union requested men from—or Alexander-Stafford requested men from the Union, as long as that was the situation, why did you still ask for a referral? A. Because. I knew I had to have a referral if I went back to work.

Q. But, Mr. Sasser had just told you he wasn't going to put you back to work, hadn't he? A. I had to get—he told me I had to get a referral from Mr. Fisher.

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Q. Is that what he told you at that time? A. I would have to have a referral.

Q. Why didn't you tell us about that the first time you told us about this June 3rd episode?

Mr. Pisarski: He testified that he did.

Q. (By Mr. Kleiner) You recall telling us earlier that Mr. Sasser had simply told you that with the cardmen out he would not put you back to work while there were cardmen unemployed? Isn't that what you told us he told you on June 3rd? A. I also showed him my referral good for June 10th and he told me there that that was no good I would have to receive another referral from Mr. Fisher before he would accept it.

Q. And, that is why you asked Mr. Fisher? A. That is right.

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Q. Are you familiar with the Charge that was filed against the International Union that was filed on your behalf by Mr. Hooker? Did you ever read that Charge? A. I read it, but I can't state anything now that was in it. I don't remember what was in it.

Q. Well, were the facts as you read them, true? A. As much as I can remember.

Q. Did you charge the International as well as the Local Union, had you ever been issued a referral slip by any member of the International Union? A. Only the business agent.

Q. The business agent of Local 47? A. The business agent of Local 47.

Q. Did he ever tell you he was an officer of the International Union? A. Well, he never told me, but that was my understanding that he was business agent and only the business agent of Local 47 would issue referrals.

Q. Well, did you understand that he was the business agent for the International Union or for the Local? A. For the Local 47.

Q. For the Local 47. Have you ever met any of the International officers? A. No, I haven't.

Q. Have you ever talked to anybody who said they were International officers? A. No, I never did.

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Trial Examiner: All right, do the parties stipulate in the first place with the understanding that we include the Fisher letter, that General Counsel's 20 is a correct copy of a letter signed by Robert Eley addressed "To whom it may concern," dated Granville, Michigan, June 9, 1954 and sent to the International Union, and is the letter that was referred to in Mr. Eley's testimony earlier?

Mr. Kleiner: And, Mr. Fisher's letter?

Trial Examiner: And, Mr. Fisher's also. Is that—

Mr. Kleiner: Local Union will stipulate.

Trial Examiner: Mr. Bryant?

Mr. Bryant: We stipulate.

Mr. Pisarski: We stipulate.

Trial Examiner: I'll receive in evidence, General Counsel's 20.

(The document heretofore marked General Counsel's Exhibit No. 20 for identification, was received in evidence.)

Mr. Kleiner: Now, I'd like to read into the record, the contents of the enclosure.

Trial Examiner: Now, this enclosure was referred to where, now?

Mr. Kleiner: In General Counsel's Exhibit 20, paragraph five.

Trial Examiner: On page one? All right.

Mr. Kleiner: It's on a single sheet of letter size plain paper in typewriting to Mr. Robert Eley, 201 Hampton, S.E., Grand Rapids, Michigan.

"Dear Sir: In reply to your letter of April 19, 1954,

please be informed that I do not have the authority to issue applications.

"Anyone asking for an application must appear before the Executive Board of Local No. 47 and make his wishes known to them.

"The Board meets at 7 p.m. on the first Friday of each month at the Labor Temple in Lansing, Michigan. Respectfully yours, Virgil P. Fisher, Business Agent, Local No. 47."

Then in handwriting which Mr. Eley states is his at the bottom it says, "This is copy of letter I received from Mr. Fisher."

Trial Examiner: Of course that wasn't on it when he received it from Fisher?

Mr. Kleiner: No, Mr. Eley states that was written on it when he forwarded a typewritten copy of this copy to the International Union.

Trial Examiner: Are you stipulating what Mr. Kleiner just stated to be a fact?

Mr. Bryant: We are.

Trial Examiner: Mr. Sickles?

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Mr. Sickles: We are.

Trial Examiner: Mr. Pisarski, are you stipulating to be a fact what Mr. Kleiner just read?

Mr. Pisarski: Yes, I'll stipulate.

Trial Examiner: Off the record.

(Discussion off the record.)

Trial Examiner: On the record. By stipulation of the parties Mr. Kleiner will now read into the record, Mr. Eley's April 19, 1954 letter to Mr. Fisher which was referred to in the Fisher letter which Mr. Kleiner has just read into the record.

Mr. Kleiner: The letter reads as follows, it is on a blank single sheet of letterhead size stationery, typewritten.

"Grand Rapids, Michigan, April 19, 1954. Dear Sir: I'm

writing you in regards to application for Heat and Frost Insulators, Local 47. Would appreciate it very much if you would send me said application to fill out.

"Have worked at this trade seven and a half years and would like to continue as a member of Local 47. If possible, send application by return mail.

"Thank you. Signed, Robert Eley, 201 Hampton, S.E., Grand Rapids, Michigan."

Trial Examiner: All right, will you stipulate that that letter was duly sent and received, Mr. Pisarski?

Mr. Pisarski: Wait, I just want to see—I would like to point out it says, "would like to continue," two dashes, not a period.

Mr. Kleiner: Oh, correct. If there is any implication, the first sentence of the second paragraph reads, "I have worked at this trade seven and a half years and would like to continue," dash, dash, "as a member of Local 47."

Mr. Pisarski: So that you don't get the impression that he is a member of 47 at the time.

Trial Examiner: All right, are you all stipulating that letter was duly sent and received?

Mr. Pisarski: Yes.

Trial Examiner: So stipulated.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 21 for identification.)

Mr. Kleiner: I think this contains some highly prejudicial statements. I don't feel like stipulating to it.

Mr. Pisarski: All right.

Mr. Kleiner: It is nothing we were a party to.

Q. (By Mr. Pisarski) Do you know what this is, General Counsel's 21?

Trial Examiner: Has it been marked for identification?

Mr. Pisarski: Yes.

The Witness: Yes.

Q. (By Mr. Pisarski) What is it? A. It's a letter that Mr. Hooker wrote to the International Heat and Frost Insulators.

Mr. Kleiner: I object. How could this man possibly know

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what Mr. Hooker—

Q. (By Mr. Pisarski) Who is Mr. Hooker? A. Mr. Hooker was my attorney at that time.

Q. (By Mr. Pisarski) Who gave you the copy of this letter? A. Mr. Hooker.

Q. And, what did Mr. Hooker say when he gave you this letter? A. He told me then, he said, "You can't—"

Q. Did he tell you when he gave you the copy of the letter that he sent copies to the Union? A. Yes.

Q. And, the International? A. Yes, he sent copies to the International and to the Local offices.

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RALPH SASSER

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Direct Examination

Q. (By Mr. Kleiner) Mr. Sasser, your occupation is what? A. Master Insulator.

Q. By what you mean a contractor? A. Right.

Q. And, you have been employed in this profession for how long? A. Fourteen months.

Q. That is as a contractor of your own business? A. Right.

Q. Prior to that time, how long were you connected with

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this profession? A. Would you ask Mr. Stafford to verify that? From his payroll records?

Q. Well, approximately how long were you with Mr.

Stafford all the time prior to your starting your own—
all the time you were in this profession prior to that time?

A. Yes.

Q. And, about how many years was that? A. Probably
six or seven years.

Q. The name of your present company is the Acme In-
sulation, is that correct? A. Incorporated.

Q. Incorporated. Now Mr. Sasser, I call your attention
to May 20, 1954. I think you've sat here and heard Mr.
Eley's testimony concerning that date, have you not?

A. I did.

Q. And, you know we are referring to a day which you
went to the so-called Central Paper Job in Muskegon?

A. I believe that would be the intent of the referral.

Q. You understand the date I am referring to? A. I
have no memory of that day as such.

Q. Of it being May 20, but you understand the day I am
talking of? A. Yes.

Q. Now, on that day did Mr. Fisher call you with refer-
ence or to tell you that men had been laid off at the Monta-

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gue job, Mr. Fisher? A. I have no memory of that call.

Q. Prior to that day, did he call you about men being
laid off on the Montague job? A. No, sir.

Mr. Pisarski: He didn't call you, or you don't remember?

The Witness: He didn't call me.

Q. (By Mr. Kleiner) You have no memory of a call from
him on that day? A. No, not to me.

Q. I'm talking about calling you. Did you receive a call
from anyone concerning men being laid off at Montague?

A. Not to the best of my knowledge.

Q. Not from anyone? A. Not to the best of my knowl-
edge.

Q. Did you find out during that day that men had been
laid off at Montague? A. I believe the testimony's shown
that—

Q. No, I want your information. A. I believe the testimony has shown that call came by way of my then employer.

Q. I am asking you now, Mr. Sasser, if you can forget the previous testimony that has been given and tell us what you yourself remember. How did you find out—first, let me ask

you, did you find out that men had been laid off at the Montague job during that day? Did you find it out? Was it called to your attention by anyone in any manner? Not necessarily a union man, but anyone? A. That was told to me.

Q. It was told to you and who told you? A. Mr. Stafford.

Q. And, can you recall where you were when he told you that? A. I believe we were in the offices of Alexander-Stafford.

Q. Did he give you any instructions as to what you should do about it or make any requests of you concerning—
A. I would like to answer that question not in specific words. I would like to answer it by saying that since the Union had always worked with us in the supplying of manpower insofar as they were able, he requested and instructed me to do everything within our power to put such men as we could to work.

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Q. (By Mr. Kleiner) Will you give us the names of the men who were not union members who had referrals that were working for Alexander-Stafford between May 20 and the time you left the company in 1954? Could you give us those names? A. I am remembering what case. I would like to give you my best memory of this and if there is any data to substantiate or deny part of it, I'll be open to correction.

Q. We only expect your best recollections, Mr. Sasser.

A. On the clothing store job just east of the newspaper building—

Q. Would that be the Jacobson Store? A. The Jacobson Store, it was necessary that some work be done immediately and I believe I tried desparately to reach Mr. Fisher who was engaged in his normal work out in the State where I could not reach him.

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Q. What was your purpose in trying to reach him?

A. To get men to do the work, and not being able to reach him, I borrowed two carpenters off of the contractor on the job and instructed them how I wanted the work done.

Q. General contractor? A. Two carpenters from the general contractor and put them on the Alexander-Stafford payroll.

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Q. (By Mr. Kleiner) Why did you attempt to try to reach Mr. Eley—

Trial Examiner: Mr. Fisher.

Q. (By Mr. Kleiner) Mr. Fisher, when you needed two men? A. Force of habit, I would expect.

Q. In other words, whenever you needed men you called Mr. Fisher? A. Sure. He's the most logical fellow for that burden, on whose shoulders that burden would fall.

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Trial Examiner: How long did these men work on the job for you?

The Witness: I don't remember.

Trial Examiner: Was it a matter of two or three days or a matter of weeks?

The Witness: I would think a matter of days, as I remember.

Q. (By Mr. Kleiner) With those particular two men, did

you notify Mr. Fisher that they were on the job the next time you talked with him? A. Sure.

Q. Do you know whether or not he came and gave them referral slips? A. I didn't see him give them any referral slips. I presume he did. I believe it is the customary practice.

Q. But, you don't know? A. I don't know this, no.

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Cross Examination

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Q. (By Mr. Pisarski) Under the practice that you followed at the Alexander-Stafford Company, could you have hired Robert Eley without clearing through the business agent? A. I believe I could have, if the conditions demanded. Now, when I say "if," when I qualify that statement, I want you to realize that if you are going to catch fish, you've got to go where fish are, so that it is quite customary for we insulators to go to the man who knows where labor is when we are in need of labor.

Trial Examiner: What do you mean by —

The Witness: In the first place, you've got to start looking.

Trial Examiner: What do you mean by "if the conditions were right?"

579

The Witness: As I stated on a previous instance here when I was unable to get ahold of Mr. Fisher because he was out, presumably in pursuit of his duties, and the job was of such urgency that it had to have someone immediately, then I took measures to get somebody there and told him about it when the time come.

Q. (By Mr. Pisarski) Told who? A. Mr. Fisher.

Q. Why was it necessary for you to tell Mr. Fisher that you hired men? A. I just assumed that it was necessary.

Q. Well you told me—why would you tell Mr. Fisher?
A. I only said I told him I did.

Q. But you would never tell Mr. Fisher that you hired men on your own? A. No, I told you that I did.

Trial Examiner: That you did tell him?

The Witness: Yes.

Q. (By Mr. Pisarski) What was the purpose in telling Mr. Fisher that you hired them? A. Because we worked together. When I say "we," I mean the contractors and the Union as represented by Mr. Fisher, and when I say we worked together, we are both engaged in one trade. Again, as contractors and as workmen, part of us doing one part of the work and part, another part of the work.

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Q. Did you have a call in for men at the time Eley was laid off? A. I cannot give you a definite answer to that question.

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Q. (By Mr. Pisarski) Now, in this affidavit when you stated "I spoke to Eley, who is a permit man and told him something to the effect that there were spare mechanics because of the Hooker shutdown," was that statement true when you made it? A. The truth of that statement I will have to rely on the way it has handed to me.

Q. Was it true when you made these statements? You signed these documents, you know what you signed. A. Again, I say as to the truth of that statement, it is true to the best of my knowledge.

Q. All right, fine. That's all I wanted. Now, when you stated that you didn't remember that you told him anything about laying him off or anything or that nature, was

that statement true? A. I have no memory of ever saying anything about laying him off.

Q. No, was the statement true when you made it?

589

Q. When you stated "I think anyone acquainted with Unionism and being on a permit would have taken off under the circumstances," did you believe that statement to be true when you made it? A. That is my personal understanding. I don't—again strictly hearsay, because I am not a union man, know nothing of unionism.

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592

Q. Can you identify this document? Mr. Kleiner, I'd appreciate you not looking over the witness's shoulder. I think it distracts him when he is looking at an exhibit, and you will have a full opportunity to examine it.

Trial Examiner: You can see it before any questions are asked concerning it. Well, let the witness see it first and then you can see it.

Q. (By Mr. Pisarski) Is that document in your hand-

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writing? A. It looks familiar.

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Q. You don't remember writing that document? A. I remember writing such a document.

Q. All right. Now, let me—

Trial Examiner: Such a document as which?

Mr. Pisarski: As General Counsel's 23.

Trial Examiner: Is that what you were referring to in your answer?

The Witness: Yes.

Trial Examiner: Does it bear your signature?

The Witness: No, sir.

Q. (By Mr. Pisarski) Now, why was this document written?

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The Witness: Probably because I was continually short of manpower and was always wanting more qualified men.

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The Witness: That's right. I said that I— let me say that I prepared that as just a recap of certain records which

597

you could verify of employment at Alexander-Stafford.

Mr. Kleiner: It is not a document that was ever sent to anybody?

The Witness: No, sir; not to the best of my knowledge. If it was sent, it was sent after I left Alexander-Stafford and without my knowledge.

Mr. Kleiner: It was something you had in your personal papers at Alexander-Stafford?

The Witness: Right.

599

The Witness: The third paragraph refers to a cement finisher.

Q. (By Mr. Pisarski) Who is that cement finisher that is referred to? It also refers to a cement finisher that was out of work at the Alexander-Stafford Company. Who was that cement finisher? A. I think the records will show it was Mr. Eley.

610

Q. Then the letter must have been written sometime between May 20 and June 22nd?

Mr. Stafford: June 14.

The Witness: Must have been.

611

Mr. Pisarski: I move for its admission into evidence.

Trial Examiner: Any objection at all to receiving it?

Mr. Kleiner: No.

Trial Examiner: I'll receive it in evidence.

(The document heretofore marked General Counsel's Exhibit No. 23 for identification, was received in evidence.)

Mr. Bryant: Can we take five minutes?

Mr. Pisarski: I'll ask one more question and then I'd like to.

Trial Examiner: All right.

Q. (By Mr. Pisarski) Isn't it true that you wrote this letter because you needed men desperately? A. That is what the letter says.

Q. Was that true, though? A. Must have been.

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Redirect Examination

Q. (By Mr. Kleiner) Mr. Sasser, when you talk about these yellow documents that you've seen so many times that they all look alike, do you refer to them as permits or referrals? How do you normally? A. I believe the headings—

Q. No, how do you normally refer to them?

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Q. (By Mr. Kleiner) Mr. Sasser, can you tell me how you personally referred to these documents, not what it said on them, but how did you, whenever you discussed them, refer to them? As permits or referrals? A. I believe I used the word "permit" because it is so printed on the document. I tried to refer to it—

Q. I show you General Counsel's Exhibit 16 and ask you to show me where it says "permit." A. Isn't it permit?

Mr. Pisarski: I object to the question, that now Mr. Kleiner is impeaching his own witness. As you will remember, this is Mr. Kleiner's witness. He called him.

Trial Examiner. Overruled.

The Witness: It says referral.

626

EDWARD KRANENBERG

a witness called by and on behalf of Local Union 47, being first duly sworn, was examined and testified as follows:

Direct Examination

627

Q. Are you a member of Local 47? A. Yes, sir.

Q. What is your position at the Alexander-Stafford Corporation? A. As an asbestos worker, and when needed, as foreman.

Q. Well, what do you mean by foreman? Will you explain to us what your duties as foreman are? A. Well, whenever a job comes up they need foremen on, they generally put me on it with other men. I am the first to go on it.

651

Q. All right. Did you actually order Mr. Eley to take his tools home from the Central Paper job?

The Witness: I told him Sasser asked him to bring his tools in.

Cross Examination

Q. (By Mr. Pisarski) How many men were at the Central Paper job?

Trial Examiner: Do you mean the entire job or the project?

Mr. Pisarski: The project.

The Witness: At the beginning or at the end of it?

Q. (By Mr. Pisarski) On May 20. A. Well, there were four of us.

Q. Who were the four? A. Robert Eley, Willis McWilliams, Bernie McWilliams and myself.

Q. Was anybody else on there? A. I don't remember anybody else, no.

Q. Do you remember the Batt brothers, Martin and Howard? A. Yes, sir.

Q. They were on the project, too, weren't they? A. Before, yes.

Q. So there were a total of six on the project? A. Yes, they came on the job for a day or two in the first week, and then left.

Q. You were the foreman of this project? A. Yes.

Q. You testified that the first man on the job was the foreman? A. Yes.

Q. You said that on direct examination. Were you the

first man on this job? A. Yes, sir.

Q. And, who are the referrals issued to? A. To all emergency men.

Q. What is an emergency man? A. Well, he is an

emergency man that takes up the slack when Local 47 can't supply asbestos workers.

Q. How long can he hold the job? A. As long as the employer sees fit to hold him.

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VIRGIL P. FISHER

a witness recalled by and on behalf of Local Union 47, having been previously duly sworn, was examined and testified as follows:

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Cross Examination

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Q. It was on May 20, was it not, that you first learned that the Hooker job was down at Montague? A. That's right.

Q. And, you stated there were approximately twenty to twenty-six men out of work? A. That's right.

Q. Were they all placed immediately on May 20 or May 21? A. No, no, sir.

Q. Were they all placed within a week? A. Well, that is a rather difficult question to answer, because quite a few of the boys were just travelers and left the territory. Whether they secured work or not, I don't know. I couldn't find work for them and some of them left. Some of them waited.

Q. I see.

Trial Examiner: How many were involved?

The Witness: Between twenty and twenty-six. I don't recall. You mean the men that were laid off?

Trial Examiner: Yes.

The Witness: Between twenty and twenty-six. I'm not

real sure of the exact amount, but it was in that neighborhood. There was quite a sizeable crew there.

Trial Examiner: Were they all members of the Union or were some of them referral men?

The Witness: I know of no referral men, with the excep-

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tion of possibly some of the improvers that they had used for distributing material and something that required a low skill. There might have been one or two referral improvers on the project. I don't recall any referral mechanics on the job at all.

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717

THOMAS STAFFORD

a witness called by and on behalf of the Respondent Company, having been previously duly sworn, was examined and testified as follows:

Mr. Bryant: I might repeat a little of what I've asked

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Mr. Stafford, but not much.

Direct Examination

Q. (By Mr. Bryant) What is your position with the Alexander-Stafford Company, Mr. Stafford? A. President and general manager.

Q. How long have you held this position? A. Since its —now wait a minute. I was elected President in 1937, President and general manager in 1937. I had the position of Vice-President and general manager from its inception which was in 1930.

Q. 1930.

Trial Examiner: From then up 'til '37?

The Witness: Yes, Vice-President and general manager.

Q. (By Mr. Bryant) How many years have you been

dealing with Local 47, Mr. Stafford? A. Since Local 47 was started.

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726

Q. Mr. Fisher testified to the general nature that he was having some difficulty placing men during May of 1954, due to local work stoppage which was holding up your type of work. During May and June of 1954, what was the labor need of your shop? A. It was steadily increasing. There is no bush to hide behind that we did not have work to re-employ Eley. There is absolutely none. We had plenty of work, there is no question.

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Q. Up to the time you did hire Mr. Eley, did he make any application to you for employment? A. Mr. Eley never made any application for employment until he came, just prior to our hiring him, with the credentials from the Union that it was okay with them. He was put to work—

Q. He never applied then until roughly the middle of this year? A. No, he never applied, never.

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765

ROBERT ELEY

766

a witness recalled by and on behalf of the General Council, having been previously duly sworn, was examined and testified further as follows:

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Mr. Kleiner: I'd like to propose a stipulation that the Alexander-Stafford Company time cards for Mr. Eley and

the payroll records which we have all examined reveal that Mr. Eley did not work for the company between the end of work on December 10, 1953 and the start of work on December 28, 1953.

Trial Examiner: Is that stipulation acceptable?

Mr. Pisarski: Yes, it is.

Trial Examiner: Mr. Bryant?

Mr. Bryant: No objection from the Respondent Company.

Trial Examiner: Did you want to join in the stipulation?

Mr. Sickles: Yes.

Trial Examiner: So stipulated.

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AGREEMENT MASTER INSULATORS' ASSOCIATION

The following Agreement is not subject to change by a Local Union. Any provision not in conflict with its letter and spirit may be agreed upon and attached to it in the form of addenda.

It provides for collective bargaining and as such must recognize as its principals Local Unions and Insulating Contractors' Associations composed of Insulating Contractors known and recognized as such within the trade.

It is understood and agreed that the approval by the International Association as to form and substance of this Agreement is only for the purpose of indicating that the International Association certifies that the said contract is not in violation of the International Constitution and By-Laws and is approved as to form and substance for that purpose only and no other.

THIS AGREEMENT, made and entered into this 1st day of July, 1953, by and between the Master Insulators' Association of Lansing, Kalamazoo, Jackson, Grand Rapids, Saginaw and vicinity as party of the first part and International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 47 of Lansing, Michigan, as party of the second part.

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ARTICLE VII

Local No. 47 will direct non-members to the employers in the numbers agreed upon and shall issue them Referral Cards for purpose of identification and classification.

* * * * *

ARTICLE IX

Members of Local No. 47 shall receive board when on jobs requiring same in the amount of \$6.00 per day and shall receive railroad transportation and local car or bus fares in excess of two city fares daily figured from City Hall to job and return to City Hall. Night traveling shall be paid for at single time, except in cases where berth is provided, when no traveling time shall be paid. When boarding on out-of-town jobs they shall receive all transportation expenses expended. (See Supplemental Agreement)

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ARTICLE XI

The party of the first part agrees to employ the membership of Local No. 47 in the application of pipe and boiler coverings, insulation of hot surfaces, ducts, flues, etc., also the covering of cold piping and circular tanks connected with the same. This to include alterations and repairing of work similar to the above and the use of all materials for the purpose mentioned.

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SUPPLEMENTAL AGREEMENT

1. *Expense Jobs in excess of 30 miles when sent by the Business Agent.* Members of Local 47 shall receive Board and Room expense in the amount of Six Dollars (\$6.00) per working day when placed by the Business Agent on jobs located in excess of thirty (30) miles from the nearest chartered city and in addition shall receive traveling expense allowance at the rate of seven cents (7¢) per mile to and from job at the beginning and termination of same.

2. *Expense Jobs in excess of 30 miles when sent by the*

Employer and night traveling. Members when sent from shop by the Employer shall receive Board and Room expense allowance at the rate of Six Dollars (\$6.00) per working day and in addition shall receive transportation allowance of Seven Cents (7¢) per mile to and from job at the beginning and termination of same figured from shop. Night traveling shall be paid for at a single time, except in cases where berth is provided, when no traveling time shall be paid. When boarding on out of town jobs, they shall receive all transportation expense expended.

3. *Expense jobs in excess of 50 miles.* Members working five (5) or less days per week on a Room and Board job located in excess of fifty (50) miles from shop or nearest chartered city when said job is to continue into the following week or weeks shall receive one (1) additional day's Board and Room expense allowance.

4. *Expense jobs of less than a full day.* Members reporting on expense jobs and leaving for no reason of personal convenience after working less than a full day shall receive full amount of expense allowance for the day.

5. *Holiday expense.* It is also agreed that Employer will

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pay the Six Dollars (\$6.00) per day Room and Board allowance on any of the six (6) regular holidays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day and Christmas Day, falling on a Tuesday, Wednesday or Thursday during a scheduled work week; or falling on a Friday if the employee is scheduled to and works on Saturday; or falling on a Saturday if the employee is scheduled to and works on Sunday.

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Seven Cents (7¢) per mile in excess of two (2) city fares daily figured from City Hall of nearest chartered cities, Jackson, Grand Rapids, Kalamazoo, Lansing, and Saginaw, Michigan. Members when ordered by the employer to transfer from job to job shall receive full traveling time in addition to traveling expense allowance at the rate of Seven cents (7¢) per mile.

7. *Transportation in lieu of transportation expense.* It is further agreed that it is permissible for an employer to furnish the means of transportation to and from job, making same available from nearest chartered city, such transportation to be accepted by employee in lieu of transportation expense allowance, provided such transportation is equal to or in conformity with public carriers and that such service is made available on an equal basis for all employees on one particular job.

8. *Job Steward.* It is further agreed that the first Mechanic on the job other than the Foreman shall act as job steward and shall have the privilege of remaining on the job for the duration of same unless employer or others can prove to the satisfaction of the union officials that he is

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unqualified as a workman or that his conduct in performance of duty is detrimental to the mutual interests of the employer and the union. Job stewards can be removed and replaced by the Business Agent.

9. The party of the first part agrees to pay to the Trustees of the Asbestos Workers Local No. 47 Welfare Fund Seven Cents (7¢) per hour for all hours worked each week by members in good standing of Asbestos Workers Local No. 47, while employed as Asbestos Workers, for the duration of this Agreement and Supplemental Agreement to be used for the purposes of said fund as set out in the Trust Agreement.

This Supplemental Agreement shall be attached to and made a part of the Agreement between the undersigned parties for the duration of the Agreement.

MASTER INSULATORS' ASSOCIATION

Per/s/JOHN BOND, *President*

Per/s/ROBERT A. JOHNSON, *Secretary*

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS AND
ASBESTOS WORKERS, LOCAL NO. 47

Per/s/FAY PECK, *President*

Per/s/LAWRENCE BRIMMER, *Secretary*

Business Agent

Dated: July 1st, 1953

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This Supplemental Agreement shall be attached to and made a part of the Agreement between the undersigned parties for the duration of the Agreement.

For Party of the First Part:

Per JOHN BOND, *President*
Per ROBERT A. JOHNSON, *Secretary*

For Party of the Second Part:

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS AND
ASBESTOS WORKERS, LOCAL NO. 47

Per WILLIAM G. WOOD, *President*
Per VIRGIL P. FISHER, *Secretary*

Dated: July 1, 1954

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3. *Expense jobs in excess of 50 miles.* Members working five (5) or less days per week on a Room and Board job located in excess of fifty (50) miles from shop or nearest chartered city when said job is to continue into the following week or weeks shall receive one (1) additional day's Board and Room expense allowance.

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unqualified as a workman or that his conduct in performance of duty is detrimental to the mutual interests of the employer and the union. Job stewards can be removed and replaced by the Business Agent.

9. *Welfare Trust Fund.* The party of the first part agrees to pay to the Trustees of the Asbestos Workers Local No. 47 Welfare Fund, the sum of ten cents (10c) per hour for all hours worked each month by all employees

employed as Asbestos Workers working under the jurisdiction of Asbestos Workers Local Union No. 47, for the duration of this Agreement and Supplemental Agreement, to be used for the purpose of said fund as set out in the Trust Agreement.

10. *Show-up Time.* Employees reporting for work and who do not start work due to lack of materials or other causes beyond their control, shall receive two hours wages unless notified one hour before starting time.

11. *Terminal City.* In accordance with letter, dated July 11, 1955, which is hereby incorporated in the new agreement, from the union to all employers, it is agreed that the City of Flint, Michigan will be recognized as a "Terminal City" within the jurisdiction of Local No. 47 and will be treated like any Chartered City.

12. *Declaration.* Nothing contained in this agreement or the supplemental agreement or in any article of this agreement or supplemental agreement read separately or together shall be construed to constitute a closed shop or to provide for conditions, which, if enforced, would constitute a closed shop. It is further agreed that the letter dated July 1, 1955, from Carlton R. Sickles, shall apply with respect to questions of interpretation of the new agreement.

13. *Conclusion.* In consideration of these undertakings and commitments, it is further agreed that the contract as amended shall remain in full force and effect until June 30, 1956 in accordance with the provisions of Article XVI and Article XVII of the present agreement, and that this Supplemental Agreement shall be attached to and made part of the Agreement between the undersigned parties for the duration of the Agreement.

For Party of the First Part:

Per [SIGNATURE UNDECIPHERABLE], *President*

Per [SIGNATURE UNDECIPHERABLE], *Secretary*

For Party of the Second Part:

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS AND
ASBESTOS WORKERS, LOCAL NO. 47

Per WILLIAM P. WOOD, *President*

Per VIRGIL P. FISHER, *Secretary*

Date: July 29, 1955

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Alexander-Stafford Corporation
Dates of Employment of New Employees
May 20, 1954 to July 31, 1955

Dates are for inclusive weeks	From		To		From		To	
	Week	Ended	Week	Ended	Week	Ended	Week	Ended
Wallace L. Bailey	7/13/54	Employed						
Olyde E. Barry, Jr., Bay City, Mich.	7/ 7/54	8/ 3/54						
Harry W. Boeing, Bay City, Mich.	9/21/54	10/ 1/54						
Percy H. Brimmer, Bay City, Mich.	7/27/54	8/ 3/54						
George H. Bugbee, Nashville, Mich.	6/ 4/54	7/27/54						
Richard S. Burton, Lansing, Mich.	11/23/54	1/ 4/55						
James T. Casey	10/12/54	Employed						
Grover C. Davis	10/ 1/54	10/ 1/54						
Joseph Dietrich	9/18/54	9/18/54						
B. Dean Dyer, Lansing, Mich.	6/15/54	8/ 3/54						
Robert Eley, Grandville, Mich.	1/ 1/54	5/28/54			7/12/55			
Henry N. Griebel, Muskegon, Mich.	5/21/54	6/ 4/54						
Max A. Harper, Saginaw, Mich.	6/15/54	7/ 7/54						
George R. Horne, Elkhart, Ind.	10/26/54	10/26/54			1 wk			
Norman Jebury	8/20/54	8/27/54						
Clayton A. Jones	6/22/54	Employed						
Jerome P. Karas	10/ 6/54	12/ 1/54						
Adolph Knop, Bay City, Mich.	7/27/54	9/15/54						
B. E. Kranenberg,	8/17/54	8/31/54			3/29/55			
Gerald LaDuke, Lansing, Mich.	9/ 7/54	11/16/54						
Hershel Landon	7/20/54	7/27/54						

Robert McMullen, Midland, Mich.	9/ 7/54	12/28/54	2/22/55	2/22/55	3/15/55	4/ 5/55
Francis A. McWilliams	6/22/54	8/24/54	10/12/54			
Clarence C. Mabiw, Jr.	8/ 6/54	9/ 3/54				
Leslie R. Mitchell, Jr., Albuquerque, N.M.	6/22/54	6/25/54				
Leslie R. Michell, Sr., Albuquerque,	6/18/54	6/18/54				
Frank R. Noykos, Jr., Midland, Mich.	7/ 7/54	10/18/54				
Frank R. Noykos, Sr., Midland, Mich.	9/14/54	10/ 8/54				
Stanley Noykos, Freeland, Mich.	6/29/54	4/11/55				
Richard Page, Bay City, Mich.	7/27/54	9/15/54				
F. J. B. Penny, Kalamazoo, Mich.	7/27/54	7/27/54				
Clarence Prindle	11/16/54	1/18/55				
Henry R. Ritzama	Prior to					
Robert G. Salois, Bay City, Mich.	5/20/54	10/26/55	1/ 7/55	1/ 7/55	3/22/55	4/26/55 6/28/55
C. Seaver, Saginaw, Mich.	7/ 7/54	8/ 3/54				
Gerald L. Seaver, Freeland, Mich.	6/15/54	7/20/54				
Norman K. Smith, Walston, Mich.	7/20/54	7/20/54	8/ 3/54	8/ 3/54	9/ 7/54	10/ 5/54
Alvin Snyder	9/14/54	4/12/55				
Robert Van Antwage, Sparta, Mich.	7/20/54	7/27/54				
Edward Van Doloski, Mt. Pleasant, Mich.	8/17/54	8/17/54				
Richard E. Whitaker, Mt. Pleasant, Mich.	7/13/54	12/14/54				
Bernard J. Dimes, Muskegon, Mich.	10/ 5/54	12/14/54				
	5/26/54	8/ 3/54				
William P. Wood, Ludington, Mich.	9/ 7/54	11/16/54				
Richard S. Burton, Lansing, Mich.	1/ 4/55	1/ 4/55				
John E. Nelson, Battle Creek, Mich.	2/ 1/55	6/21/55				
John L. Rowley, Cornstock Park, Mich.	2/ 1/55	3/22/55				

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Exhibit No. GC-14

CONSTITUTION AND BY-LAWS

of

THE INTERNATIONAL ASSOCIATION OF HEAT AND FROST
INSULATORS AND ASBESTOS WORKERS

Complimentary Copy

As adopted by the Eighteenth Convention held in
Los Angeles, Calif., September 2, 3, 4, 1952

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OFFICIAL MEMBERSHIP BOOK

of the

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS
AND ASBESTOS WORKERS

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NOTICE

This book must be carried on all work by the member to whom it is issued.

He must produce it upon demand for inspection by any labor official or other authorized person.

The color of this book shall denote the classification of its holder. If Brown, Mechanic; if Grey, International Ex-empt; if Green, Improver.

The "good standing" of this member shall be determined by the official receipts he holds showing the payment of dues and assessments in accordance with Article XII.

A member losing his book shall have another issued him by the General Office upon request of his Local Union Financial Secretary.

A person finding this book will confer a favor by mailing it to the owner's address or to Asbestos Workers, 211 Machinists Building, Washington 1, D. C.

ARTICLE III

MEMBERSHIP

Section 11. An Applicant accepted by a Local Union must pay dues and full initiation fee to said Local before being obligated and declared a member, which in all cases must be with the consent of the International Association.

ARTICLE IV

FUNDS

Section 2. Should at any time the General Funds of the International Association fail to meet its expenses, the General Executive Board shall levy a general membership assessment, in amount necessary to meet the financial requirements.

ARTICLE VII

PRESIDENT

The duty of the International President shall be to preside at all sessions of the International Association and conduct same according to parliamentary rules in accordance with the Constitution. He shall preside at Local Union

meetings when he so decides. He shall be the official Business Representative and Chief Organizer of the International Association. He shall be an ex-officio member of all Local Union Committees and Boards. He shall have authority to audit Local Union finances and to suspend Local Union officers and appoint their successors pending hearing by General Executive Board or Convention. He shall represent the International Association at conventions of the American Federation of Labor and Building and Construction Trades Department and he shall appoint such additional convention delegates as our International is entitled

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to. He shall work only for the International Association. He shall receive a salary of Eighteen Thousand Dollars (\$18,000) per annum in addition to a monthly allowance of One Hundred Dollars (\$100.00) for office expenses. When away from home, he shall receive transportation and a daily allowance of Twenty-five Dollars (\$25.00). His term of office determined by the 15th, 1937, Convention, "Life."

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ARTICLE IX

SECRETARY-TREASURER

Section 1. The International Secretary-Treasurer shall keep correct record of Convention proceedings and General

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Executive Board sessions and furnish copies to Local Unions. He shall preserve all correspondence and documents. He shall conduct all correspondence between the General Office and Local Unions. He shall receive applications for charters and shall sign, seal and deliver same when ordered by General Executive Board.

Section 2. He shall make record of all moneys received at General Office and mail each Local Union quarterly state-

ment showing all financial transactions between the Local Union and General Office.

Section 3. He shall supply Local Unions with International Official Receipt Books, Withdrawal, Transfer and Traveling Cards, Referrals, Application Blanks, standard Local Union Stationery, Membership Books, Seals, Local Union Bookkeeping System (which shall be the only bookkeeping system in use by all Locals), International Joint Trade Agreements and all paraphernalia. He shall also supply, through the Local Union, membership lapel buttons with the International emblem thereon at a cost of One Dollar (\$1.00) each. This emblem is copyrighted and cannot be used by others for commercial purposes.

Section 4. He shall make disbursements only by sanction of General Executive Board on vouchers signed by International President.

Section 5. He shall deposit funds in the name of the International Association subject to withdrawal only on draft countersigned by President.

Section 6. He shall make a financial report at regular

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meetings of the General Executive Board and produce anything within his keeping upon its order.

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ARTICLE X

GENERAL EXECUTIVE BOARD

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Section 15. The General Executive Board shall have power to reorganize or suspend a Local Union or revoke its Charter when in the opinion of the Board such action is in keeping with the best interests of the Local membership or

the International Association.

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ARTICLE XII

INITIATION FEES, FINES, ASSESSMENTS, DUES

Section 4. Local Union dues shall be payable in advance, and in localities governed by Building Trades Councils, Local Union dues shall be payable quarterly, in advance. Where Local Unions derive their revenue from a work-day dues system said payments shall be made weekly. Dues or assessments when levied by a Local Union shall not apply to a member of a Sister Local working within its territory under the conditions outlined under Article XVIII, Section 10.

ARTICLE XVII

TRANSFER CARDS

Section 1. Transfer Cards can only be issued to such of our membership who have been affiliated at least twelve (12) months and whose financial obligations to the Local Union have been paid in full.

ARTICLE XVIII

LOCAL UNIONS

Section 1. Local Unions are *subordinate* branches of the International Association and as such can be reorganized, suspended or disbanded with charter revocation *by action*

of the General Executive Board or Convention. They shall be granted to Building Trades Workers, Marine Workers and Inside (Plant) Workers. The latter shall confine their activities exclusively to maintenance work.

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Section 5. Local Unions as *subordinate* branches of the International Association can only exercise local autonomy in matters upon which the International Constitution and By-Laws are silent. They shall function within their chartered jurisdiction and in such other territory covered by signed trade agreement with employers.

Section 6. Local Unions when suspended by General Executive Board or International Convention or which suspend themselves or cease operation shall forward to the General Office their charter, moneys, books, cards, seals, and all other paraphernalia immediately. The officers of said Local Union shall be denied recognition until such time as this clause is lived up to in letter and spirit.

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Section 13. Local Unions shall work under trade agreements as adopted by the International Association in Convention assembled. In cities where the Building and Construction Trades Councils adopt and sign general or "Blanket" agreements, such agreements must have International Association approval before becoming binding upon our membership.

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ARTICLE XX

BY-LAWS

Section 1. The business of Local Unions shall be conducted by the following officers: President, Vice President,

Recording Secretary, Corresponding Secretary, Financial Secretary, Treasurer, three Trustees, Executive Board of five members, Sergeant-at-Arms, and Business Representative, who shall be Mechanics. The President and Business Representative must be members who have applied heat or frost insulating materials for at least five (5) years as members of the International Association.

Section 2. In order to be eligible for the position of Local Union President or Business Representative, a member must have worked as a Mechanic for at least two (2) years and shall have been a member of said Local Union for at least two (2) years, have been in continuous good standing for two (2) years and in attendance at a majority of Local Union meetings held during the twelve (12) months prior to date of nomination.

Section 3. Local Unions shall hold at least one meeting monthly to transact business. All initiation fees, reregistration fees, assessments, fines, dues and other moneys received shall be accounted for at these meetings, which shall be held at the regular time and place of meeting or such other time and place as designated by the President and of which due notice is given the membership.

Section 4. Special Local Union meetings can be called only by the President and then on petition signed by at least one-tenth (1/10) of the good standing Local Union membership which in no instance shall number less than five (5) with reasonable advance mailed notice given all members

as to time and place of said special meeting.

Section 5. Should any question come before a Local Union on which the International Constitution and By-Laws are silent or not clearly defined, it shall immediately be referred to the International Secretary for decision. Such

decisions shall be inserted in the local minute book for reference.

Section 6. No member shall be allowed to vote on any question unless he is present at the meeting of his Local Union and is in good standing. At no time shall a member not in good standing be allowed to attend meetings or have voice at same if there be objection by one (1) member in good standing.

Section 7. Should an officer engage in business as Employer, Estimator, Salesman, Insulation Inspector, Employer's Representative, Superintendent, Shop Foreman or Agent in the trade, his office shall be declared vacant and he shall be given Withdrawal Card.

Section 8. An officer absenting himself from three (3) consecutive meetings without reasonable excuse shall have his office declared vacant and his successor shall be elected. The vacancy of any office (except that of President) shall be filled by special nomination and election within thirty (30) days and reasonable advance notice (at least one (1) week) of time and place of the special election given the Local membership. The President shall appoint temporary officers pending election.

Section 9. Newly elected officers shall be obligated as soon as elected.

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Obligation for Newly Elected Officers

"I, ... without mental reservation, do solemnly pledge my honor as a man, that I will faithfully discharge the duties of the office to which I have been elected in this Local Union, and that I will support the Constitution of the International Association and its By-Laws and I will enforce the same to the best of my ability without prejudice or partiality."

Section 10.

Obligation for Newly Elected Members

"I, ... without mental reservation do solemnly swear on my honor as a man, to uphold the Constitution and By-Laws of the International Association and Local Union No. and carry out their just demands, and do all in my power to aid and assist my fellow members."

ARTICLE XXI

LOCAL UNION OFFICERS

Section 1. Nomination for Local Union office shall be held at one or more regular Local Union meetings preceding that of election at which meeting no nomination shall be considered. Nomination for Local Union office shall be for a period of not less than one (1) year. Elections shall be decided by plurality vote in secret ballot.

Section 2. A candidate for Local Union office may be nominated in his absence provided there is a communication from him signifying his willingness to serve. All Local Union Officers shall receive such compensation or salary as the Local may determine.

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Section 3. The President shall preside and preserve order at all meetings, voting only in case of a tie vote on any question, sign all orders on the Treasurer authorized by the Union, and perform all other customary duties pertaining to his office. He shall be an ex-officio member of all boards and committees with a voice without vote.

Section 4. The Vice President shall, in the absence of the President, perform all duties appertaining to the latter's office, in addition, he shall be the chairman at all meetings of the Executive Board. In the absence of the Vice President the Executive Board shall from its members present

elect a temporary Chairman. Should the Office of President become vacant, the Vice President automatically becomes the Local President for the unexpired term and a new Vice President will be elected under regulations for filling vacancies between regular elections set forth in Section 8 of Article XX.

Section 5. Local Union meetings with the President and Vice President in non-attendance shall be presided over by a chairman chosen by the membership.

Section 6. The Recording Secretary shall keep a correct record of proceedings of the Union and attest all orders signed by the President and Financial Secretary. He shall be the custodian of the archives of the Union.

Section 7. The Corresponding Secretary shall read all communications received for the Union at its meetings. As statistician he shall communicate and gather information

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relating to wages and working hours and the Labor movement in general.

Section 8. The Financial Secretary shall receive and keep a correct record of all moneys paid into the Local Union, shall issue all warrants for moneys ordered paid, and pay over all moneys to the Treasurer at the close of each meeting, and receive receipt for same. He shall enter in his book all dues and payments made, and issue official receipts to members. He shall also act in the payment of strike and lock-out benefits.

Section 9. The Financial Secretary of each Local Union shall on official Financial Secretary's Monthly Report blanks as supplied by the General Office forward to the International Secretary-Treasurer a statement of the Local membership each month. A copy of statements to the General Office shall be filed by the Local Union. He shall remit all finance and handle all correspondence with the General

Office in reference to finance, new members, transfers, withdrawals, traveling cards, etc.

Section 10. The Financial Secretary or Treasurer may act as Trustee, but only as ex-officio member, of an Auditing Committee.

Section 11. The Treasurer shall receive and receipt for all moneys paid to him by the Financial Secretary, and disburse the same upon the order of the Local, duly signed by the President and Financial Secretary, attested by the Recording Secretary, with the seal thereon. He shall keep account of all moneys received and expended and produce

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treasury books, cash books and all other securities whenever called upon by the Trustees to do so and shall deposit all moneys or funds in such bank as the Local may designate.

Section 12. It shall be the duty of the Business Agent to investigate all complaints referred to him and act in conjunction with and under direction of the Executive Board. He shall use all legal means to procure employment for the members of the Local. The Business Agent shall cooperate with the Job Steward in the enforcement of the Code of Workmanship and report to the Local the quality of the work being performed in the application of insulating materials on any and all jobs he visits. The Local shall supply adequate insurance coverage for accident or fatality while engaged in the duties of his office.

Section 13. Local Unions shall elect an Executive Board of five (5) members, exclusive of Business Agent, at the time they elect officers, who shall meet at least monthly. In addition to the five (5) elected members of the Executive Board the Vice President shall act as Chairman, voting only in case of a tie. The Executive Board is empowered to at all times comply with the directions of the General

Executive Board of the International Association as provided in this Constitution and By-Laws. The Executive Board shall bond the offices of Financial Secretary and the Treasurer.

Section 14. Local Unions shall elect three (3) Trustees who shall have general supervision over all funds and property of the Local Union including all officers' bonds and keep in their possession all property of the Local Union

not otherwise provided for; they shall see that Local Union funds are properly deposited and shall sign no orders for withdrawal of said funds unless authorized by motion of the Local Union. The Trustees shall, when required by decision of the International Association or Local Union meeting, deliver all moneys, checks, or other property in their possession to persons designated by the International Association or Local Union to receive same.

Section 15. Sergeant-at-Arms shall examine all official Membership Books and see that all present at meeting are entitled to remain and report his findings to the chairman. He shall conduct candidates through the initiation ceremony and he shall be furnished assistance when necessary, by chair appointment.

Section 16. The first individual Mechanic to start work on any operation shall act as Job Steward. A group of workmen when starting an operation shall from their number elect a Job Steward. Job Stewards can be removed and replaced by another Job Steward at any time by the Business Agent.

Section 17. The duties of Job Stewards shall be to ascertain the "good standing" of men at work and enforce the Code of Workmanship in addition to bringing to the attention of the Local anything with which in their opinion it should be acquainted.

Section 18. Local Unions shall decide all questions of parliamentary nature in accordance with Robert's Rules of Order.

Section 19. All affiliated Local Unions must be in affiliation with their State Federation of Labor.

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AGREEMENT

MASTER INSULATORS' ASSOCIATION

The following Agreement is not subject to change by a Local Union. Any provision not in conflict with its letter and spirit may be agreed upon and attached to it in the form of addenda.

It provides for collective bargaining and as such must recognize as its principals Local Unions and Insulating Contractors' Associations composed of Insulating Contractors known and recognized as such within the trade.

It is understood and agreed that the approval by the International Association as to form and substance of this Agreement is only for the purpose of indicating that the International Association certifies that the said contract is not in violation of the International Constitution and By-Laws and is approved as to form and substance for that purpose only and no other.

THIS AGREEMENT, made and entered into this day of, 19...., by and between the Master Insulators' Association of and vicinity as party of the first part and International Association of Heat and Frost Insulators and Asbestos Workers' Local No. of as party of the second part.

ARTICLE I

It is hereby agreed that the provisions of this Agreement shall be binding upon the party of the first part individually

and as members of said Association and upon the membership of Local No. individually and as members of said Union within a radius of thirty (30) miles from City Hall—outside territory situated half way to any other affiliated Local Union. Rand & McNally's map shall be considered the Official map of the Trade. All places on said map touched or intersected by radius circle shall be considered within the territory, and in such cases the entire town or city limits of such places shall be considered within the territory. On operations (All contracts on the premises of buildings, mines, mills, factories, shipyards, etc.) outside of chartered territory the nearest Local Union is to be given first preference in the supplying of labor in excess of one (1) Mechanic and one (1) Improver, who shall conform to the working rules and Trade Agreement of the Local Union under whose jurisdiction they work, and in addition shall receive the wage rate and board allowance highest in either the Local having jurisdiction over the operation or the wage rate incorporated in this Agreement.

ARTICLE II

The "regular" work day shall be (.....) hours between 8 a.m. and 5 p.m.

ARTICLE III

The ratio of Improvers may equal but not exceed a ratio of one (1) Improver to three (3) Mechanics employed in a shop. No Improver shall execute work unless in company with a Mechanic.

ARTICLE IV

All labor in excess of the "regular" work day, on Saturday, Sunday and observed holidays, shall be known as overtime and shall be paid for at a (.....)

rate of wages if ordered by the Employer. The observed holidays are: New Year's Day, Decoration Day, Independence Day, Thanksgiving Day and Christmas Day. No work shall be performed on Labor Day except in special cases of emergency and then only when triple (3) time is paid.

ARTICLE V

There shall be a Trade Board consisting of members of the Master Insulators' Association and members of Local No. and said Trade Board shall have the right to investigate all labor operations of the parties to this Agreement within its prescribed limits so far as any of the provisions of this Agreement are involved, in connection with which any question may arise, and for this purpose shall have the right to summon, question and examine any party to this Agreement, or their representatives or agents.

There shall be no lockouts except when of a general nature and ordered by a Building Trades Employers' Association; or strikes except when of a general nature and ordered by a Building and Construction Trades Council with the approval of the International Association of Heat and Frost Insulators and Asbestos Workers. Trade disputes or grievances shall be settled without cessation of work, and in cases where the parties to this agreement fail

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to agree the matter in dispute shall be referred to the Joint Trade Board.

In case any disputes arise, notice must be given in writing to the Secretary of the Trade Board by aggrieved party within days.

The Trade Board shall be governed by the following By-Laws:

1. Regular meetings shall be held quarterly in January, April, July and October.

2. Special meetings shall be called by the Chairman of the Trade Board on written request of either side, stating object for which meeting is to be called, but no matters shall be discussed at special meetings except those designated in said written request.
3. shall constitute a quorum, ... from each side, neither shall cast more ballots than the other.
4. The vote on all questions of violations of this agreement shall be by secret ballot.
5. It shall require a vote to carry any question.
6. The Trade Board shall have the power to impose fines or other penalties where agreed by vote, as above provided for, that any of the articles of this Agreement have been violated by either party to same. Such fines or penalties shall be imposed against either the party of the first part or the party of the second part, as the case may be, and the Trade Board shall see that any fines or penalties so imposed are satisfied and the charitable disposition of moneys so collected shall be decided by the Trade Board.

ARTICLE VI

The individuals, firms or corporations comprising the membership of the Master Insulators' Association agree to execute their work as described in Article XI as direct Employers of Local No. membership, and not to sublet any of the same nor the labor thereof; and Local No. agrees not to contract, sub-contract or estimate on work nor allow its membership to do so nor to act in any trade capacity other than that of workman. It is also agreed that no member of a firm or officer of a corporation or their representative or agents shall execute any part of the work

of application of materials and in no case shall any member of Local No. estimate on or give any labor figures.

ARTICLE VII

Local No. will direct non-members to the employers in the numbers agreed upon and shall issue them Referral Cards for purposes of identification and classification.

ARTICLE VIII

The party of the first part agrees to pay Mechanics at the rate of per hour. Improvers will be paid at a *maximum* of four rates which shall be in the *minimum* amounts of 50, 60, 70 and 80 per cent of the Mechanic hourly wage rate for the first, second, third and fourth years respectively. Improver hourly rates: 1st year; 2nd year; 3rd year; 4th year Payments of all wages and expenses shall be weekly on job or at Shop on day designated by Shop as pay day. Improvers shall not be eligible for Mechanic's examination until after hav-

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ing been four (4) years in the trade. Applications for Mechanic's examination shall be filed quarterly at meetings of the Joint Trade Board.

(For use in connection with employe benefit funds)

The party of the first part further agrees to pay to the trustees of the at the following rate:

(Name of Fund)

..... to be used for the purposes of said fund as set out in the Trust Agreement.

ARTICLE IX

Members of Local No. shall receive board when on jobs requiring same in the amount of per day and shall receive railroad transportation and local car or bus fares in excess of two city fares daily figured from City Hall to job and return to City Hall. Night traveling shall be paid for at single time, except in

cases where berth is provided, when no traveling time shall be paid. When boarding on out-of-town jobs they shall receive all transportation expenses expended.

ARTICLE X

Members of Local No. shall be at a point (.....) minutes' travel time from Shop employing them at 8 a.m. and 5 p.m. Day travel beyond said point shall be paid for during "regular" working hours.

ARTICLE XI

The party of the first part agrees to employ the membership of Local No. in the application of pipe and boiler coverings, insulation of hot surfaces, ducts, flues,

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etc., also the covering of cold piping and circular tanks connected with the same. This to include alterations and repairing of work similar to the above and the use of all materials for the purpose mentioned.

ARTICLE XII

Local No. agrees that its membership shall be considered "at work" for a Shop from time they accept employment and that they shall proceed to and execute said work in a faithful workmanlike manner and not quit same until after reasonable notice has been given Employer. Local No. further agrees that its Mechanic members in charge of out-of-town operations where board is paid shall complete the same before leaving Shop of Employer. Complaints arising from inferior workmanship shall be referred to the Joint Trade Board and all found contributing to it, penalized.

ARTICLE XIII

Local No. agrees that it will work under this form of signed Trade Agreement with any Master Insulator to

whom it furnishes labor and further agrees that Master Insulators shall have preference in labor supply.

ARTICLE XIV

Local No. shall have a permanent office address with telephone service, where their Business Agent or authorized officer can be communicated with between and a.m. and and p.m. each working day for the purpose of answering inquiries and providing necessary service to the trade.

ARTICLE XV

Local No. agrees there shall be no limitations or restrictions placed upon the individual working efforts of its membership.

ARTICLE XVI

Either party to this Agreement desiring to renew it in present form or with change or amendment shall make known such intention in writing ninety (90) days prior to the expiration of this Agreement.

ARTICLE XVII

This Joint Trade Agreement shall become effective, 19..... and shall be rigidly observed until its expiration, 19....., during which time neither party to it shall continue in force or create any rule or By-Law conflicting with its provisions.

ARTICLE XVIII

Any portion of this Agreement found to be in violation of existing federal or state law shall become inoperative and the balance of the Agreement as such continue in full force and effect until date of expiration.

Signed:

For Party of the First Part:

MASTER INSULATORS ASSOCIATION,

Per
President.

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Per
Secretary.

For Party of the Second Part:

INTERNATIONAL ASSOCIATION OF HEAT AND
FROST INSULATORS AND ASBESTOS WORKERS,
LOCAL NO.

Per
President.

Per
Secretary.

Witnessed by:

.....
.....

An "independent" Master Insulator not a party to the above Agreement must sign the "Individual" Form of Trade Agreement. This form eliminates the Joint Trade Board and provides for chosen arbitrators for settling labor disputes.

* * * * *

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LOCAL NO. 47

Heat and Frost Insulators
and Asbestos Workers

1952

Grand Rapids, Kalamazoo, Jackson,
Lansing, Saginaw

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LOCAL BY-LAWS

Any member of Local No. 47 found working with any man not holding a Permit or Union Card shall be called before the Executive Board and fined accordingly.

Members riding in a group on transportation jobs shall each (individually) receive four cents (.....) per mile.

A good Improver is a courteous one.

Safety saves time and doctor bills.

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Exhibit No. G. C. 20

Grandville, Mich.

June 9, 1954

To Whom It May Concern.

Am writing this letter in regards to Local #47. I have been trying for 5 years to get into said Local but to no avail.

I have worked at this trade 7 years on Permit. Have worked for a number of Cont,s during this period. The past 4 years have been with Alexander & Stafford.

I first asked for Mechanics Application 5 years ago when Richard Glass was B.A. but was refused. Next when Larry Brimmer held office I was again turned down. After Virgil Fisher took office I approached him regarding application. At this time he made this remark, You can one but it won't do you any good—As the Body will turn you down.

I went to Lansing on meeting night of said Local, to pick up my Referral and was Ridiculed by members who were too much under influence of Liquor to know who or what they were voting for. At this time I overheard this remark (in regards to another Grand Rapids Man) If he is a Grand Rapids man—Turn him down.

Shortly after this meeting I sent Mr. Fisher a registered letter requesting an application. I am sending copy of letter I rec. from him in ans. to my request.

I followed his advice and appeared before the Executive Board at their next meeting. They would not give me a definite answer regarding application. At this time Mr. Fisher said he would let me know after the meeting of Union Members and Cont,s which was the following Thurs. I never heard from him.

My permit was canceled May 21st. I met Mr. Fisher in

Staffords Office June 3rd and he was very smug about whole thing. He made this remark at this time—No more permits—and you won't get in Local as the Boys don't want you in. After looking at a Job I had did alone he said he had nothing against me or my work—It was just the Boys.

Mr. Fisher was in Grand Rapids yesterday June 8th, and was approached again about a Referral. Now he says No more Referrals will be issued to any man who has previously had one. Although Company is badly in need of men he still refused even though he cannot supply Shop with men needed.

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At meeting of Building & Traders which was held June 7th it was brought out that on one particular job here in Grand Rapids, Steam Fitters were covering Pipe and had been caught twice in one week. The lack of Card Men in this area makes conditions like this exist. Surely this could be eliminated by increasing the Local.

Mr. Fisher told me they would absolutely not issue any more Applications, yet at their last meeting June 4th they accepted a man who had worked at Trade 10 years yet he had *never* been affiliated with any Local.

I have been told about article in your last Journal and pointed that out to Mr. Fisher—Mr. Woods—Mr. Davenport Bus. Agt.—Pres.—Sec. Treas. Respectively. They agreed to what I told them was in Journal but said it would have to come to a vote of the Body, before I could even get an application. Isn't this very unusual? Was told by the Executive Board at this time I would never get a card.

I am sure any Cont, I have ever worked for would vouch for me. Its impossible to believe situations like this exist. I have hesitated a long before bringing this to your attention. But after yesterday when Mr. Fisher said what he

did I think its time the International knows what is going on.

Would it be possible for an International Representative to be sent to this area to Investigate these conditions? If you do not deem it necessary, would you answer by return mail and let me know how to obtain Membership in Local #47? I do not want to work Non-Union—But if I cannot obtain Membership into Local—or get a Referral—I have no other alternative.

Respectfully,

Signed

4521 Jenison Rd., S.W.

Grandville, Mich.

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Exhibit No. G. C.-21

August 16, 1954

International Association of Heat and
Frost Insulators and Asbestos Workers, AFL
211 Machinists Building
Washington 1, D. C.

Attention: Mr. C. W. Sickles,
Secretary-Treasurer

Gentlemen:

Our client, Mr. Robert Eley of this city, has conferred with us regarding the refusal of Local 47 of your organization to accept him into its membership and issue him a mechanic's card.

Mr. Eley has worked in the asbestos trade for several years. Prior to May 20, 1954 he had approximately four years of continuous employment in this trade as an employee of Alexander Stafford, an insulating contractor in Grand Rapids. His employment record has been excellent, as attested to by Mr. Ralph Sasser the former Estimator and Superintendent of Stafford and present manager of Acme Insulators, Inc. of 329 Summer Ave., N.W., Grand Rapids, Michigan. Mr. Sasser has told us personally that he ranks Mr. Eley's work as excellent and refers to Eley as a first class worker in the trade.

During this same period of employment Mr. Eley held a cement mason's card, this being his former trade, and a special permit from the Asbestos Workers. The permit expired in May 1954 and Mr. Eley's efforts to renew it have been in vain. Likewise his attempts to secure membership in Local 47 and the International over the past several years have not been rewarded. He presently stands

ready to pay the initiation fee and his dues in return for his membership card. The only reason given for the stand of Local 47 is that Mr. Eley has continued to hold his cement mason card. To our knowledge it is accepted practice for tradesmen to retain their membership trade unions from which they transfer—at least until they are insured of the right to membership in the appropriate union of their new trade. Mr. Eley will gladly surrender his rights to a

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cement mason's card at such time as he receives such assurance, if such a step is required by your organization.

Local 47's persistent rejection of Mr. Eley's application for membership has caused great injury to Mr. Eley. In May 1954 he lost his job with Alexander Stafford solely because of his inability to secure such membership. He is presently being refused jobs by local employers having contracts with Local 47, which jobs would be open to him if he were a member of Local 47. (We have personally verified this report.)

We do not presently wish to challenge any hiring arrangement Local 47 has with employers in this area or the right of Local 47 to refuse an employee's application for membership while contesting his right to continued employment under a union shop clause. We believe that this matter may be settled amicably. Therefore, we are requesting that you take this matter up with the officers of Local 47 at your early convenience and point out the merits in Mr. Eley's request for (1) acceptance of his application for membership *or* (2) renewal of his aforementioned permit *or* (3) withdrawal of Local 47's objection to Mr. Eley's future employment in the asbestos trade within its territorial jurisdiction.

We shall appreciate hearing from you within the next few days on the matters discussed herein.

Yours very truly,
McCOBB, HEANEY & DUNN
By Richard F. Hooker

RFH:NT

cc: Local 47, International Association of
Heat and Frost Insulators and Asbestos
Workers, AFL

• • • • •

International Asso. of Heat & Frost Insulators &
Asbestos Workers

Mr. C. W. Sickles, Sec.-Treas.
211 Machinist Bldg.
Washington 1, D. C.

Gentlemen:

We are enclosing a table column "A" of which represents the card carrying asbestos workers which were on our payroll for the first week of each of the months of 1949 through 1953 inclusive, column "B" represents the permit men (some affiliated with other AF of L trades and some not) who were on our payroll at the same time.

One new affiliate of the above column "B" has been on our payroll, with the exception of two weeks in 1952 and a few other weeks during which he has been transferred to some other shop at the convenience of the Union since Feb. 19.

One affiliate (a cement finisher, who has sought admission to Local No. 47 twice in my presents) has been on our payroll with exceptions similar to that listed above since both the above men are off of our payroll at the present time.

We have a request for 4 men from the union which is unfilled.

The above data is submitted as a side light to your letter

published in the April 1953 Asbestos Worker and to advise similarly published on the same subject in later issues.

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	49		50		51		52		53	
	47 Per.									
Jan.	9	4	10	1	12	5	6	4	4	6
Feb.	9	4	9		11	8	6	7	5	7
Mar.	8	4	9	1	9	6	6	4	5	5
Apr.	9	2	9	1	8	2	7	4	5	6
May	9	1	8	1	8	4	4	3	5	8
June	7	2	7	1	7	2	7	3	7	7
July	9	1	6	2	7	2	3	3	6	2
Aug.	8	4	6	2	7	2	4	2	5	5
Sept.	9	2	11	4	5	2	4	3	7	4
Oct.	9	4	9	7	6	3	4	3	7	6
Nov.	10	2	11	6	5	3	4	3	9	8
Dec.	8	4	12	6	5	5	4	5	7	7
	104	34	107	32	90	44	53	44	72	71

Agreement

Individual Employer

THIS AGREEMENT, made and entered into this first day of July 1939 by and between Murphy Supply Co.; Kalamazoo Asbestos Co.—Alexander-Stafford Corp.; J. W. Willman; Jackson Insulation Co. of below and vicinity as party of the first part and International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 47 of Jackson, Lansing, Kalamazoo, Saginaw, & Grand Rapids as party of the second part.

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ARTICLE VII.

In case where an "emergency" exists for which Local No. 47 fails to supply Mechanics or Improvers, the party of the first part may secure the "emergency" number agreed upon. "Emergency" Mechanics and Improvers shall be paid the rate of wages as hereinafter specified in this agreement, and shall work under "permit" of Local No. 47 until replaced by members of said Union.

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ARTICLE IX.

Members of Local 47 shall receive board when on jobs requiring same in the amount of \$2.10 per working day and shall receive 3 cents per mile railroad transportation and local car or bus fares in excess of two city fares daily figured from Jackson, Lansing, Kalamazoo, Saginaw, and Grand Rapids City Hall to job and return to City Hall. Night traveling shall be paid for at single time, except in cases where berth is provided, when no traveling time shall

be paid. When boarding on out-of-town jobs they shall receive all transportation expenses expended.

• • • • •

ARTICLE XI.

The party of the first part agrees to have all their work in the application of all pipe and boiler coverings, and insulation of all hot surfaces, and ducts, and flues, etc., also the covering of all cold piping and circular tanks connected with the same, executed by good standing members of Local No. 47. This to include all alterations and repairing of work similar to the above and the use of all materials for the purpose mentioned.

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Exhibit No. L.U.R. 2

Agreement

Master Insulators' Association

THIS AGREEMENT made and entered into this first day of July, 1942, by and between the Master Insulators' Association of Jackson, Lansing, Kalamazoo, Saginaw & Grand Rapids and vicinity as party of the first part and International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 47 of Jackson, Lansing, Kalamazoo, Saginaw & Grand Rapids as party of the second part.

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ARTICLE VII.

In cases where the Joint Trade Board determines an "emergency" exists for which Local No. 47 fails to supply Mechanics or Improvers, the party of the first part may secure the "emergency" number agreed upon. "Emergency" Mechanics and Improvers shall be paid the rate of wages as hereinafter specified in this agreement, and shall work under "permit" of Local No. 47 until replaced by members of said Union.

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ARTICLE IX

Members of Local #47 shall receive board and room expense allowance in the amount of \$2.50 per working day and observed holidays falling within the work week when no jobs located in [UNDECIPHERABLE] shall receive traveling expense allowance at the rate of 4c per mile to and from job at beginning and termination of same. Job

foreman when sent from shop by employer shall receive board and room expense allowance at the rate of \$2.50 per working day as of Article IV when on jobs located in excess of 30 miles from shop employing them and in addition shall receive transportation expense allowance of 4c per mile to and from job at beginning and termination of same figured from shop.

Members of Local #47 when working on jobs located within a radius of 30 miles shall receive transportation expense allowance at the rate of 4c per mile in excess of two city fares daily figured from City Hall to job and return to City Hall of nearest of the chartered cities—Jackson, Lansing, Kalamazoo, Saginaw and Grand Rapids. Night traveling shall be paid for at single time, except in cases where berth is provided, when no traveling time shall be paid. When boarding on out of town jobs they shall receive all transportation expenses expended.

It is further agreed that it shall be permissible for an employer to furnish the means of transportation to and from job, making same available from nearest chartered city, such transportation to be accepted by employees in lieu of transportation expense allowance providing such transportation is equal to and in conformity with public carriers and that such service is made available on an equal basis for all employees on any one particular job.

J. M. Millman

Ed. A. Sturby

C. E. Murphy

John Bond

E. H. Norming

E. D. Ansley, Jr.

ARMSTRONG CORK CO.

JOHNS-MANVILLE

SALES CORPORATION

W. L. Raw

ALEXANDER-STAFFORD
CORP.

Thomas Stafford

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ARTICLE XI.

The party of the first part agrees to have all their work in the application of all pipe and boiler coverings, and insulation of all hot surfaces, and ducts, and flues, etc., also the covering of all cold piping and circular tanks connected with the same, executed by good standing members of Local No. 47. This to include all alterations and repairing of work similar to the above and the use of all materials for the purpose mentioned.

• • • • •

Agreement

Master Insulators' Association

The following Agreement is not subject to change by a Local Union. Any provision not in conflict with its letter and spirit may be agreed upon and attached to it in the form of addenda.

It provides for collective bargaining and as such must recognize as its principals Local Unions and Insulating Contractors' Associations composed of Insulating Contractors known and recognized as such within the trade.

THIS AGREEMENT, made and entered into this first day of July, 1944 by and between the Master Insulators' Association of Jackson, Lansing, Kalamazoo, Saginaw & Grand Rapids and vicinity as party of the first part and International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 47 of Jackson, Lansing, Kalamazoo, Saginaw and Grand Rapids as party of the second part.

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ARTICLE VII.

In cases where the Joint Trade Board determines an "emergency" exists for which Local No. 47 fails to supply Mechanics or Improvers, the party of the first part may secure the "emergency" number agreed upon. "Emergency" Mechanics and Improvers shall be paid the rate of wages as hereinafter specified in this agreement, and shall work under "permit" of Local No. 47 until replaced by members of said Union.

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ARTICLE IX

Members of Local #47 shall receive board and room expense allowance in the amount of \$2.50 per working day and observed holidays falling within the work week when on jobs located in excess of 30 miles from nearest chartered city and in addition shall receive traveling expense allowance at the rate of 4c per mile to and from job at beginning and termination of same. Job foremen when sent from shop by employer shall receive board and room expense allowance at the rate of \$2.50 per working day as of Article IV when on jobs located in excess of 30 miles from shop employing them and in addition shall receive transportation expense allowance of 4c per mile to and from job at beginning and termination of same figured from shop.

Members of Local #47 when working on jobs located within a radius of 30 miles shall receive transportation expense allowance at the rate of 4c per mile in excess of two city fares daily figured from City Hall to job and return to City Hall of nearest of the chartered cities—Jackson, Lansing, Kalamazoo, Saginaw and Grand Rapids. Night traveling shall be paid for at single time, except in cases where berth is provided, when no traveling time shall be paid. When boarding on out of town jobs they shall receive all transportation expenses expended.

It is further agreed that it shall be permissible for an employer to furnish the means of transportation to and from job, making same available from nearest chartered city, such transportation to be accepted by employees in lieu of transportation expense allowance providing such transportation is equal to and in conformity with public

carriers and that such service is made available on an equal basis for all employees on any one particular job.

George Shaw
J. M. Millman
John Bond
Ed. A. Stubly
E. D. Ainslie, Jr.
E. H. Nearing
W. D. Ferst

ARTICLE XI.

The party of the first part agrees to have all their work in the application of all pipe and boiler coverings, and insulation of all hot surfaces, and ducts, and flues, etc., also the covering of all cold piping and circular tanks connected with the same, executed by good standing members of Local No. 47. This to include all alterations and repairing of work similar to the above and the use of all materials for the purpose mentioned.

AGREEMENT

MASTER INSULATORS' ASSOCIATION

The following Agreement is not subject to change by a Local Union. Any provision not in conflict with its letter and spirit may be agreed upon and attached to it in the form of addenda.

It provides for collective bargaining and as such must recognize as its principals Local Unions and Insulating Contractors' Associations composed of Insulating Contractors known and recognized as such within the trade.

THIS AGREEMENT, made and entered into this 29th day of Nov. 1945, by and between the Master Insulators' Association of Lansing, Jackson, Grand Rapids, Kalamazoo & Saginaw and vicinity as party of the first part and International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 47 of Lansing, Jackson, Grand Rapids, Kalamazoo & Saginaw as party of the second part.

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ARTICLE VII.

In cases where the Joint Trade Board determines an "emergency" exists for which Local No. 47 fails to supply Mechanics or Improvers, the party of the first part may secure the "emergency" number agreed upon. "Emergency" Mechanics and Improvers shall be paid the rate of wages as hereinafter specified in this agreement, and shall work under "permit" of Local No. 47 until replaced by members of said Union.

ARTICLE IX

Members of Local No. 47 shall receive board and room

expense in the amount of \$2.50 per working day and observed holidays falling within the work week when placed by the Business Agent on jobs located in excess of 30 miles from nearest chartered city and in addition shall receive traveling expense allowance at the rate of 4¢ per mile to and from job at beginning and termination of same. Members when sent from shop by employer shall receive board and room expense allowance at the rate of \$2.50 per working day as of Article IV when on jobs located in excess of 30 miles from shop employing them and in addition shall receive transportation expense allowance of 4¢ per mile to and from job at beginning and termination of same figured from shop.

Members of Local No. 47 when working on jobs located within a radius of 30 miles shall receive transportation expense allowance at the rate of 4¢ per mile in excess of two city fares daily figured from City Hall to job and return to City Hall of nearest of the chartered cities—Jackson, Lansing, Kalamazoo, Saginaw and Grand Rapids or shop city of employer. Night traveling shall be paid for at single time, except in cases where berth is provided, when no traveling time shall be paid. When boarding on out of town jobs they shall receive all transportation expenses expended.

Members working five or less days per week on a board and room job located in excess of fifty miles from shop or nearest Chartered City when said job is to continue into the following week or weeks shall receive one additional day's board and room expense allowance.

It is further agreed that the first mechanic on the job other than foreman shall act as job steward and shall have the privilege of remaining on job for the duration of same unless employer or others can prove to satisfaction of the union officials that he is unqualified as a workman or that his conduct in performance of duty is detrimental to the mutual interests of the employer and the union.

It is further agreed that it shall be permissible for an employer to furnish the means of transportation to and from job, making same available from nearest chartered city, such transportation to be accepted by employees in lieu of transportation expense allowance providing such transportation is equal to and in conformity with public carriers and that such service is made available on an equal basis for all employees on any one particular job.

Members reporting on expense job and leaving for no reason of personal convenience after working less than a full day shall receive full amount of expense allowance for the day.

Members, when ordered by employer to transfer from job to job shall receive full traveling time in addition to traveling expense allowance at the rate of 4¢ per mile.

WILLIAM ENNIS,
 [SIGNATURE UNDECIPHERABLE]
 [SIGNATURE UNDECIPHERABLE]
 [SIGNATURE UNDECIPHERABLE]
 [SIGNATURE UNDECIPHERABLE]
 [SIGNATURE UNDECIPHERABLE]

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ARTICLE XI.

The party of the first part agrees to have all their work in the application of all pipe and boiler coverings, and insulation of all hot surfaces, and ducts, and flues, etc., also the covering of all cold piping and circular tanks connected with the same, executed by good standing members of Local No. 47. This to include all alterations and repairing of work similar to the above and the use of all materials for the purpose mentioned.

Agreement

Master Insulators' Association

The following Agreement is not subject to change by a Local Union. Any provision not in conflict with its letter and spirit may be agreed upon and attached to it in the form of addenda.

It provides for collective bargaining and as such must recognize as its principals Local Unions and Insulating Contractors' Associations composed of Insulating Contractors known and recognized as such within the trade.

THIS AGREEMENT, made and entered into this 15th day of July, 1947 by and between the Master Insulators' Association of Lansing, Jackson, Kalamazoo, Saginaw and Grand Rapids and vicinity as party of the first part and International Association of Heat and Frost Insulators and Asbestos Workers' Local No. 47 of Lansing, Jackson, Kalamazoo, Saginaw and Grand Rapids as party of the second part.

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ARTICLE VII.

In cases where the Joint Trade Board determines an "emergency" exists for which Local No. 47 fails to supply Mechanics or Improvers, the party of the first part may secure the "emergency" number agreed upon. "Emergency" Mechanics and Improvers shall be paid the rate of wages as hereinafter specified in this agreement, and shall work under "permit" of Local No. 47 until replaced by members of said Union.

ARTICLE IX.

Members of Local No. 47 shall receive board and room expense in the amount of (\$3.50) per day and observed holidays falling within the work week when placed by the Business Agent on jobs located in excess of 30 miles from the nearest chartered city and in addition shall receive traveling expense allowance at the rate of (5c) per mile to and from job at the beginning and termination of same. Members when sent from shop by employer shall receive board and room allowance at the rate of (\$3.50) per working day as of ARTICLE IV and in addition shall receive transportation allowance of (5c) per mile to and from job at the beginning and termination of same figured from shop.

Members of Local No. 47 when working on jobs located within a radius of 30 miles shall receive transportation expense allowance at the rate of (5c) per mile in excess of two city fares daily figured from city hall to job and return to city hall of nearest of the chartered cities, Jackson, Grand Rapids, Kalamazoo, Lansing, and Saginaw, or shop city of employer. Night traveling shall be paid for at single time, except in cases where berth is provided, when no traveling time shall be paid. When boarding on out of town jobs they shall receive all transportation expense expended.

Members working five or less days per week on a board and room job located in excess of fifty miles from shop or nearest chartered city when said job is to continue into the following week or weeks shall receive one additional day's board and room expense allowance.

It is further agreed that the first Mechanic on the job other than the Foreman shall act as job Steward and shall have the privilege of remaining on the job for the duration of same unless employer or others can prove to the satis-

faction of the union officials that he is unqualified as a workman or that his conduct in performance of duty is detrimental to the mutual interests of the employer and the union. Job Stewards can be removed and replaced by another Job Steward any time by the Business Agent.

It is further agreed that it is permissible for an employer to furnish the means of transportation to and from job, making same available from nearest chartered city, such transportation to be accepted by employee in lieu of transportation expense allowance, providing such transportation is equal to in conformity with public carriers and that such service is made available on an equal basis for all employees on one particular job.

Members reporting on expense jobs and leaving for no reason of personal convenience after working less than a full day shall receive full amount of expense allowance for the day.

Members when ordered by employer to transfer from job to job shall receive full traveling time in addition to traveling expense allowance at the rate of (5c) per mile.

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ARTICLE XI.

The party of the first part agrees to have all their work in the application of all pipe and boiler coverings, and insulation of all hot surfaces, and ducts, and flues, etc., also the covering of all cold piping and circular tanks connected with the same, executed by good standing members of Local No. 47. This to include all alterations and repairing of work similar to the above and the use of all materials for the purpose mentioned.

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IR-800

Grand Rapids, Mich.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

ALEXANDER-STAFFORD CORPORATION

and

ROBERT ELEY, AN INDIVIDUAL

and

THE MASTER INSULATORS ASSOCIATION¹

Party to the Contract

and

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & ASBESTOS
WORKERS, LOCAL 47, AFL, and
INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & ASBESTOS
WORKERS, AFL

Parties to the Contract

THE MASTER INSULATORS ASSOCIATION

and

ROBERT ELEY, AN INDIVIDUAL

and

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & ASBESTOS
WORKERS, LOCAL 47, AFL, and

Case No. 7-CA-1197

Case No. 7-CA-1198

¹ This is the correct name of the Association as it appears in the Association's Articles of Incorporation.

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & ASBES-
TOS WORKERS, AFL

Parties to the Contract

and

ALEXANDER-STAFFORD CORPORATION
Party to the Contract

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & ASBES-
TOS WORKERS, LOCAL 47, AFL, and
INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS & ASBES-
TOS WORKER, AFL

and

ROBERT ELEY, AN INDIVIDUAL

and

THE MASTER INSULATORS ASSOCIA-
TION

Party to the Contract

and

ALEXANDER-STAFFORD CORPORATION
Party to the Contract

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*Mr. Robert Pisarski, for the Gen-
eral Counsel.*

*Mr. Robert G. Howlett, of
Schmidt, Smith and Howlett,
Grand Rapids, Mich., for Robert
Eley, the Charging Party.*

*Mr. Stephen A. Bryant, of Uhl,
Bryant, Slawson and Wheeler,*

Case No. 7-CB-237

Grand Rapids, Mich., for The Master Insulators Association and Alexander-Stafford Corporation.

Mr. Carlton R. Sickles, of Washington, D. C., for the International Union.

Mr. A. Robert Kleiner, of Morse and Kleiner, Grand Rapids, Mich., for Local 47.

Before: *Alba B. Martin*, Trial Examiner.

INTERMEDIATE REPORT

Statement of the Case

Upon charges filed by and on behalf of Robert Eley, an individual, the General Counsel of the National Labor Relations Board, herein called the General Counsel and the Board, by the Acting Regional Director for the Seventh Region (Detroit, Michigan), issued his complaints dated May 27, 1955, against Alexander-Stafford Corporation (herein called Respondent Company) The Master Insulators Association (herein called the Employer Association and the Association) Local 47 of the International Association of Heat & Frost Insulators & Asbestos Workers (herein called Local 47 and the Local) and International Association of Heat & Frost Insulators & Asbestos Workers, AFL (herein called the International Union and the International) alleging that Respondents had engaged in and were engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3), Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the National Labor Relations Act as amended, 61 Stat. 136, herein called the Act. Copies of the charges and complaints

together with an order consolidating the cases and notice of hearing were duly served upon the parties.

With respect to the unfair labor practices the complaints alleged in substance that at all times since June 1, 1953, Respondent Company and the Employer Association together with Local 47 and the International Union have had and enforced collective bargaining agreements which contained illegal closed-shop provisions granting a greater degree of union security than permitted by the Act and other provisions affording illegal preferential treatment in the terms and conditions of employment for union members. The complaints alleged further that the agreements and/or understandings between the parties required as a condition of employment that employees be members of the Union or have referral cards or work permits from it. In substance, the complaints against Respondent Company and the Respondent Unions alleged the discharge induced by the Unions of one Robert Eley on or about May 20, 1954, because he was not a member of and did not possess a work permit or referral from the Union, and that thereafter he was repeatedly refused reinstatement for the same reasons. In their answers Respondents denied the commission of any unfair labor practices.

Pursuant to notice a hearing was held September 6, 7, 8, and 9, 1955, in Grand Rapids, Michigan, before Alba B. Martin, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. All parties were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was af-

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forded all parties. At the conclusion of the General Counsel's case-in-chief the General Counsel's motion to conform the pleadings to the proof was granted and the International Union's motion to dismiss the complaint as to it was denied. At the conclusion of the hearing the Respondents

made short oral statements. Helpful briefs were received from the General Counsel, the International Union, and Local 47. No brief was received from the Respondent Company or the Employer Association.

Upon the entire record in the case and from observation of the witnesses I make the following:

Findings of Fact

I. THE BUSINESS OF THE MASTER INSULATORS ASSOCIATION AND OF RESPONDENT COMPANY

The Master Insulators Association, a corporation created under the laws of Michigan in 1952, is composed of employers, including Respondent Company, engaged in insulating work principally in the Western Michigan area. It was formed by a number of such employers who theretofore had engaged in multiemployer bargaining with Local 47 for over a decade. Since 1953 it has annually negotiated a single collective-bargaining agreement with Local 47 for all association members and has been the party to the contracts on their behalf. By this joint action the association members, including Respondent Company, have manifested a desire to be bound in their labor relations by joint rather than individual action, and have constituted themselves a single employer within the meaning of the Act.²

During 1953, 1954, and 1955 at least six employers other than Respondent Company were members of the Employer Association: Garlock Insulation Company of Lansing, Michigan; Genesee Asbestos Company, Flint, Michigan; Kalamazoo Asbestos Company, Kalamazoo, Michigan; M. Evert Asbestos Insulation Company, Grand Rapids, Michigan; Murphy Supply Company, Lansing, Michigan; and, J. W. Willman Company, Saginaw, Michigan. In addition,

² *Insulation Contractors of Southern California, Inc.*, 110 NLRB 638, 639; *Capital District Beer Distributors Association, et al.*, 109 NLRB 176, 179; *Gottfried Baking Company, Inc.*, 103 NLRB 227; *E. F. Shuck Construction Co., Inc.*, 114 NLRB No. 116. Cf. *Santa Clara County Pharmaceutical Association, et al.*, 114 NLRB No. 60.

during 1955 at least three other companies were members. Annually the above-named six members of the Association in their combined operations sell goods and perform services valued in excess of \$200,000 to Michigan manufacturers in Michigan. Each of said Michigan manufacturers annually ship goods valued in excess of \$50,000 from points located in the State of Michigan to points located outside the State of Michigan. Annually the above-named six members of the Association in their combined operations receive by direct shipment from points located outside of Michigan to points located in the State of Michigan, goods valued in excess of \$500,000.

Alexander-Stafford Corporation, with its principal place of business in Grand Rapids, Michigan, is engaged in the business of installation and distribution of asbestos and other type insulators. Its annual gross income during the calendar years 1953, 1954, and 1955 was between \$400,000 and \$500,000 per year, 40 percent of which was received from work performed under contract on public buildings, industrial plants, commercial buildings and the like, including Fisher Body plants of the General Motors Corporation and a General Motors Diesel plant. During the calendar year 1953, it purchased materials at a cost of \$244,000, of which approximately \$228,000 worth was shipped to it directly from points outside the State of Michigan. During the calendar year 1954, it purchased materials at a cost of

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approximately \$326,000 of which \$283,000 worth was shipped to it directly from points located outside the State of Michigan. In *Insulation Contractors of Southern California, Inc., et al*, 110 NLRB 638, 639, the Board said,

Although the Board has recently announced new minimum requirements for the assertion of its jurisdiction, we will adhere to our past practice of considering all association members who participate in multiemployer

bargaining as a single employer for jurisdictional purposes.

Considering as a single employer for jurisdictional purposes the Respondent Company and the six other companies who have been members of the Employer Association since its inception, it appears that this single employer had a direct inflow of over \$728,000 during 1953, and over \$826,000 during 1954, and that annually it has a direct outflow of over \$300,000—which figures are considerably in excess of the Board's present minimum standards for asserting its jurisdiction.³ It appears, therefore, and I find, that this employer is engaged in commerce within the meaning of the Act, and that under its present jurisdictional standards it will effectuate the policies of the Act for the Board to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Association of Heat & Frost Insulators & Asbestos Workers, AFL, and, Local 47 thereof, are labor organizations within the meaning of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Unfair labor practices committed by Respondent Company, Local 47, and the Employer Association*

1. Supervisory status of Ralph Sasser and Edward Kranenberg

At all times of concern herein until July 11, 1954, Ralph Sasser was contract manager of Respondent Company. As such, on behalf of the Company he negotiated job contracts and was responsible to the president of the Company for the performance of the work under the job contracts. He was instrumental in the establishment of the Respondent Association and as a representative of Respondent Com-

³ *Jonesboro Grain Drying Cooperative*, 110 NLRB 481.

pany participated in the bargaining with Local 47 which led to the 1953 and 1954 contracts considered below. He was in charge of hiring and firing those who applied insulation, herein called asbestos workers, for Respondent Company. It is held that Sasser was a supervisor within the meaning of the Act.

Edward Kranenberg, an employee of some 25 years' standing with Respondent Company, worked generally as a job foreman. Although the contracts of concern herein established the hourly rates of pay of mechanics and improvers (journeymen and apprentices, Kranenberg was paid a little more per hour than either group. The contracts were silent as to rates of pay of foremen. All of Respondent Company's work of applying insulating material to structures was done at the job site, none of it at the Company's warehouse in Grand Rapids. The job sites were located all over (or anywhere in) Western Michigan. As job foreman Kranenberg was responsible to the contract manager and the Company's president for the proper performance of the work at the job site. He assigned all work on that job. He testified that if an asbestos worker did sloppy work, and upon being shown did not improve, Kranenberg "would have to report to Mr. Sasser." He checked to see that the men reported on time and did not

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leave early. He saw that the work was done according to the job specifications. If the job foreman was not a supervisor, then Respondent Company had no supervisor at the job site where a number of men might be working in a city miles away from Grand Rapids, which Sasser would visit only from time to time as his other activities permitted. On the above evidence, and on the entire record considered as a whole, I find and hold that at all times of concern herein Edward Kranenberg had authority, in the interest of the Respondent Company, responsibly to direct other employees, and that the exercise of such authority was not merely

routine or clerical in nature but required the use of independent judgment. It follows that within the meaning of Section 2(11) of the Act, Kranenberg was a supervisor. It is so found.

2. Background

Contributory to an understanding of the issues in dispute herein, although in no way relied upon for the resolution of those issues, are the following background facts, all of which occurred more than 6 months prior to the filing of the initial charge herein.

a. For a number of years prior to the amendment of the Act in 1947, the form contract used by Local 47 in its bargaining negotiations with the employers in Michigan who later formed The Master Insulators Association, contained a clause—Article XI—providing that all insulating work—that is, the application of all insulating materials, with which we are here solely concerned—would be performed by members in good standing of Local 47. Such clauses were included in the contracts signed with the employers in 1939, 1942, 1944, 1945, and July 1947.

In general, the contracts between the parties from 1939 to 1947 covered a number of subjects other than wages and transportation expense, and consisted of a number of pages. From at least 1949 until June 30, 1953, the only written agreements between the parties were one-page documents relating solely to wages and transportation expense. In *Construction Specialties Company*, 102 NLRB 1542, the Board considered whether the practice of another local of the same international union during a part of this period and under similar written contracts, violated the Act—a problem which does not arise herein because of Section 10(b) of the Act and because not pleaded in the complaint.

b. The General Counsel adduced evidence that when Eley first went to Sasser for employment, in 1950, the latter said to him that, "as long as you have a referral . . . you can

work. . . . Even though you have a referral . . . and a cardman is available out of work, that cardman will have the job in preference to referral men." Sasser testified that he did not recall this conversation with Eley.

Robert Eley testified further that once during his first 4 months of employment, when some new men were brought onto the job Kranenberg "wanted to make sure that we had our referrals up to date, because he said, 'If you not up to date, the Union members of Local 47 aren't allowed to work with non union members or members that don't have a referral.'" Although Kranenberg in substance denied this testimony, for reasons given later, Eley was a more credible witness than Kranenberg.

c. The General Counsel adduced the evidence that in December 1953, Eley was absent from work with Respondent Company under circumstances not unlike those herein. At first Eley testified that the event occurred in January 1954, but Eley's timecards, introduced by Respondent Company, established that it could not have taken place then. On rebuttal Eley testified that it occurred in December 1953, while he was working on the "St. Thomas" job, and that he was off for a week only. He worked on the "St.

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Thomas" job during the 4 days just before his departure. Then counsel stipulated that the payroll records reflect that Eley did no work for Respondent Company from the end of work on December 10 until December 28, 1953. Eley was unable to remember whether during the first week he was off he moved his family from one home to another. Asked how he remembered the dates he had given in his direct testimony, he stated that he had refreshed his recollection from the letter he wrote the International Union—which is the document referred to below as a memorandum dated June 9, 1954. The record does not reflect whether or not all employees were off for a period of time during the Christmas period. Although Local 47 urges this

testimony as an adverse reflection upon Eley's general credibility, I view it as reflecting solely upon his memory for dates (for which he acknowledged a weakness), and upon his memory for the duration of events. By his demeanor on the witness stand Eley impressed me as a credible witness and a far more credible witness than Sasser.

With respect to this event Eley testified that, "Mr. Sasser came on the job and told me that the Local was putting their cardmen in and that he would have to lay me off. He said it might not be what they claim it is . . . he said 'when things smooth out I'll give you a call and you can come back to work.'" Eley added that "in about a week's time he called me and I went back to work." At that time he did not get a new referral; he still had his old one.

Sasser was not asked concerning this event, so he neither confirmed nor denied Eley's version of it. However, Sasser testified that he never laid off a nonunion man in order to provide work for a union man.

3. The contracts

The agreements with which we are here concerned are those in effect during and after the 6-month period before the filing and service of the charges,⁴ the contracts in effect at the time Robert Eley left the employ of Respondent Company and during the period that he did not work there—that is, prior to his beginning to work there again on July 5, 1955. These are the contracts "made and entered into" and "effective" on July 1, 1953, July 1, 1954, and July 1, 1955, which recited that they were to be "rigidly observed."

Prior to 1953, the contracts were jointly negotiated with Local 47 by a group of employers, and all employers who signed the contracts considered themselves bound by them. In the bargaining in 1953 and 1954, the negotiating was

⁴ The charge against Local 47 and the International Union was filed and served October 8, 1954. The charge against Respondent Company was filed and served November 18, 1954. The charge against the Employer Association was filed and served November 19, 1954.

handled by the Employer Association and all members were considered bound by the resultant contract, having first given their approval of the contract to those who bargained on their behalf if they themselves were not present. An agent of Respondent Company, Ralph Sasser, was instrumental in the formation of The Master Insulators Association and was one of its negotiators at the bargaining meetings with Local 47 in the summers of 1953 and 1954. In 1955 the Employer Association was represented at the bargaining by a committee of three, which included Thomas Stafford, president of Respondent Company, who in July 1955 became president also of The Master Insulators Association.

Without question on this record—and it was not contended otherwise—the Employer Association, Respondent Company, Kalamazoo Asbestos Company and Local 47 were all bound by these contracts. The responsibility of the International Union, if any, is considered hereinafter.

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These three contracts each consisted of a so-called master agreement, which was supplied by the International Union, and several pages of supplemental agreement. Clauses attacked by the General Counsel as containing a greater degree of union security than permitted by Section 8(a)(3) of the Act, and other provisions attached as affording illegal preferential treatment in the terms and conditions or employment to union members, were as follows:

“ARTICLE I.

It is hereby agreed that the provisions of this Agreement shall be binding upon the party of the first part individually and as members of said Association and upon the membership of Local No. 47 individually and as members of said Union within a radius of thirty (30) miles from City Hall—outside territory situated half way to any other affiliated Local Union. Rand &

McNally's map shall be considered the Official map of the Trade. All places on said map touched or intersected by radius circle shall be considered within the territory, and in such cases the entire town or city limits of such places shall be considered within the territory. On operations (All contracts on the premises of buildings, mines, mills, factories, shipyards, etc.) outside of chartered territory the nearest Local Union is to be given first preference in the supplying of labor in excess of one (1) Mechanic and one (1) Improver, who shall conform to the working rules and Trade Agreement of the Local Union under whose jurisdiction they work, and in addition shall receive the wage rate and board allowance highest in either the Local having jurisdiction over the operation or the wage rate incorporated in this Agreement.

"ARTICLE VI.

The individuals, firms or corporations comprising the membership of the Master Insulators' Association agree to execute their work as described in Article XI as direct Employers of Local No. 47 membership, and not to sublet any of the same, nor the labor thereof;...

"ARTICLE VII.

Local No. 47 will direct non-members to the employers in the numbers agreed upon and shall issue them Referral Cards for purpose of identification and classification.

"ARTICLE IX.

Members of Local No. 47 shall receive board when on jobs requiring same in the amount of \$6.00 per day and shall receive railroad transportation and local car or bus fares in excess of two city fares daily figured from nearest chartered city Hall to job and return to City

Hall. Night traveling shall be paid for at single time, except in cases where berth is provided, when no traveling time shall be paid. When boarding on out-of-town jobs they shall receive all transportation expenses expended.

"ARTICLE XI.

The party of the first part agrees to employ the membership of Local No. 47 in the application of pipe and boiler covering, insulation of hot surfaces, ducts, flues, etc., also the covering of cold piping and circular tanks

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connected with the same. This is to include alterations and repairing of work similar to the above and the use of all materials for the purpose mentioned.

"SUPPLEMENTAL AGREEMENT

1. *Expense Jobs in excess of 30 miles when sent by the Business Agent.* Members of Local 47 shall receive Board and Room expense in the amount of Six Dollars (\$6.00) per working day when placed by the Business Agent on jobs located in excess of thirty (30) miles from the nearest chartered city and in addition shall receive traveling expense allowance at the rate of seven cents (7c) per mile to and from job at the beginning and termination of same.

2. *Expense Jobs in excess of 30 miles when sent by the Employer and night traveling.* Members when sent from shop by the Employer shall receive Board and Room expense allowance at the rate of Six Dollars (\$6.00) per working day and in addition shall receive transportation allowance of Seven Cents (7c) per mile to and from job at the beginning and termination of same figured from shop. Night traveling shall be paid for at a single time, except in cases where berth is provided, when no traveling time shall be paid. When

boarding on out of town jobs, they shall receive all transportation expenses expended.

3. *Expense jobs in excess of 50 miles.* Members working five (5) or less days per week on a Room and Board job located in excess of fifty (50) miles from shop or nearest chartered city when said job is to continue into the following week or weeks shall receive one (1) additional day's Board and Room expense allowance.

4. *Expense jobs of less than a full day.* Members reporting on expense jobs and leaving for no reason of personal convenience after working less than a full day shall receive full amount of expense allowance for the day.

6. *Transportation Jobs located within a radius of 30 miles and job transfer.* Members of Local 47, when working on jobs located within a radius of thirty (30) miles shall receive allowance for transportation expense at the rate of Seven Cents (7c) per mile in excess of two (2) city fares daily figured from City Hall of nearest chartered cities, Jackson, Grand Rapids, Kalamazoo, Lansing, and Saginaw, Michigan. Members when ordered by the employer to transfer from job to job shall receive full traveling time in addition to traveling expense allowance at the rate of Seven Cents (7c) per mile.

On their faces, the 1953, 1954, and 1955 contracts contained certain clauses which discriminated in favor of members of Local 47 over nonmembers. Each contract provided for the employment of members, and, in Article VII, of nonmembers. Yet each contract, in Article IX, and paragraphs 1, 2, 3, 4, and 6 of the Supplemental Agreement, provided for expenses on the job for only union members, and was silent as to expenses for nonmembers. To this extent each contract was discriminatory and unlawful on

its face and should be corrected. It was Virgil Fisher's uncontradicted and credited testimony, however, that in fact non-members receive the same expense money in all respects as do members.

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In *Mundet Cork Corporation*, 96 NLRB 1142, 29 LRRM 1021, the Board found that the earlier form of this International Union's master agreement violated the Act. There Article XI was identical with Article XI here; but Article VII there provided that where the joint trade board determined an "emergency" existed, the employer might obtain the "emergency" number of employees agreed upon, who would work under "permit" from the local "until replaced by members of said union." The Board said,

Concededly, Article XI of this contract did not expressly provide that the association hire only, or primarily, Union members. Article VII, however, by providing for the hiring of non-members only in "emergency" situations, when no union members were available, and for their ultimate replacement by union members, dispelled any doubt as to the meaning of Article XI. Considering these provisions together, we find that the respondents' 1949 contract, by its terms, both express and implied, provided for preferential hiring of members of the Respondent Union.

In his brief here, counsel for the International Union stated that the change in the wording of Article VII to its present form was made in an attempt to comply with the Board's ruling in *Mundet Cork Corporation*, and urged that in view of this and the deletion from Article XI of the previous closed-shop provisions, the contracts herein being examined no longer provide for preferential hiring of union members. It appears to me, however, that on its face Article VII of the revised master agreement is at best ambiguous, and that in order to understand its meaning it is necessary to the practice of the parties under it.

4. Hiring, referral and clearance practices under the contracts

a. Generally

1. *John Bond* was president of the Kalamazoo Asbestos Company, a member of The Master Insulators Association. His company is not a respondent here. Bond was also president of the Employer Association from its inception in 1952 until July 1955. He dealt with the Local for many years prior to the amendment of the Act in 1947, during which years, as stated above, the contracts provided closed-shop conditions except in emergencies, and the ultimate replacement of those hired in emergencies by union members. In substance Bond testified, although somewhat vaguely, that the practice of his company has not changed since the changes in the master agreement beginning in 1953; that the company considers itself bound to call the business agent of Local 47 for asbestos workers, that the latter will send him union members if he has any available and others only if he has not, that if the business agent cannot supply any men the company will find the men and the Local will issue referrals. Thus under his company's practice the Local is the sole source of supply, and known to the company the Local gives preference to members—which amounts to a violation of the Act. Although the testimony of Virgil Fisher, (considered more fully below), business agent of Local 47 since about April 1954, does not fully parallel or corroborate Bond's testimony, Fisher was not called upon to, and did not, deny the truth of Bond's testimony. Assuming for the moment the truth of Bond's testimony, no order would lie against Kalamazoo Asbestos Company because it is not a respondent herein. The legal effect of its practice upon the possible violation of Respondent Company and the Master Builders Association is considered below.

2. *Ralph Sasser*, contract manager of Alexander-Stafford Corporation from about 1948 to July 11, 1954, who did

most of the hiring for it during the period with which we are concerned, testified that when he needed asbestos workers his practice was "to hire from the Union . . . because that is where one . . . knows the available manpower is." Asked if he thought he could have hired a specific nonunion member without clearing through the business agent, Sasser replied, "I believe I could have, if the conditions demanded. Now, when I say 'if,' when I qualify that statement, I want you to realize that if you are going to catch fish, you've got to go where fish are, so that it is quite customary for we insulators to go to the man who knows where labor is when we are in need of labor." Asked what he meant by, "if the conditions were right," Sasser replied, "As I stated on a previous instance here when I was unable to get hold of Mr. Fisher because he was out, . . . and the job was of such urgency that it had to have someone immediately, then I took measures to get somebody there and told him about it when the time come."

Sasser's reference was to an occasion, sometime between May 20 and July 11, 1954, where on a specific job when he needed two men "immediately," he "tried desperately" to reach Fisher, and not being able to he borrowed two carpenters from the general contractor of the job, put them on Respondent Company's payroll, and instructed them how he wanted the work done. When he was first questioned on this, in a leading question he was asked whether he attempted to reach Fisher because he felt he had a legal obligation to or because he felt he could get the best men that way. Sasser replied, "Force of habit, I would expect." The next time Sasser talked with Fisher he told him about these two men being on the job. Asked if it was necessary for him to tell Fisher, he replied, "I just assumed that it was necessary." Asked his purpose in telling Fisher, he replied, "Because we worked together"—the contractors and the Union—"we are both engaged in one trade . . ." Fisher then gave the two carpenters referrals.

Having earlier testified that he had seen so many of the yellow slips—meaning referral slips—that they all looked alike to him, and having earlier alluded to them interchangeably as permits or referrals, Sasser was asked what he called them whenever he referred to them. He answered, “permit because it is so printed on the document.” This suggested that Sasser still thought of them as permits, which they used to be, although for some years there have been no permits, but only referrals.

Sometime between May 20 and June 14, 1954, Sasser prepared but did not send a draft of a letter to the secretary-treasurer of the International Union. The draft said,

Gentlemen: We are enclosing a table column “A” of which represents the card carrying asbestos workers which were on our payroll for the first week of each of the months of 1949 through 1953 inclusive, column “B” represents the permit men (some affiliated with other A.F. of L. trades and some not) who were on our payroll at the same time.

• • • • •
We have a request for 4 men from the union which is unfilled.

The above data is submitted as a sidelight to your letter published in the April 1953 Asbestos Worker and to advises similarly published on the same subject in later issues.

With the help of counsel, Sasser indicated that the letter to which he referred in the Asbestos Worker, a publication of the International Union, probably was a notification to the local unions from the International Union instructing them to expand their locals and take in more members so they could more properly service the jobs. Sasser said the letter was probably written “because I was continuously short of manpower and was always wanting more qualified men.” On the attached table one column is headed

"47," the other "per." Of note herein is the fact that neither the "letter" nor the table makes any reference to a possible third category, those on the payroll who were neither members of Local 47 or on "permit" from it. As the documents were prepared "as just a recap of certain records . . . of employment at Alexander-Stafford," to give the International added evidence of the need of expanding the Local, and as the record showed at times a high proportion of "permit" men as compared with "47" men—which is undoubtedly what Sasser intended to show—it is highly probable that if there had been any employees in this third category, he would have included the figures concerning them. This omission, plus the entire record in the case which made no reference to any employees in this third category, convinces me that there were none. I conclude that at all times of concern herein all asbestos workers working for Respondent Company were either members of or referrals from Local 47.

It is concluded from Sasser's above testimony, and from the entire record considered as a whole, that Sasser, representing Respondent Company and having assisted in the negotiation of the 1953 and 1954 contracts, considered himself bound to hire all asbestos workers through the Local or get referrals for any he hired himself. Thus his practice was "to hire from the Union," except that under certain circumstances, namely in emergencies when he could not locate the business agent, he would hire the man himself and, out of "force of habit," because he "just assumed that it was necessary," would tell the business agent about it the next time he saw him. Because he was continuously short of manpower and was having trouble getting it from the Local, Sasser went so far as to draft a letter to the International Union—which, however, he did not send, for the reason, he presumed, that in the meantime he had received the necessary manpower from the Local. Had he not felt compelled to get from or have his manpower cleared

by the Local, which, for reasons of its own had chosen to restrict its membership to meet less than the peak-load requirements, presumably Sasser could have undertaken on his own to train some new men in the field. There is no evidence that he ever did.

Confirming Sasser's understanding that the Respondent Company's arrangement with Local 47 was compulsory rather than permissive was Sasser's statement to Eley on May 20, 1954—as found below—that until the union men were placed, “I can't put you to work, I *can't* keep you working”; and also Sasser's statement to Eley on about May 29, 1954—as found below—that until all the cardmen were placed, “I *can't* put you back to work.” Although on May 20, Sasser added that, “We've *got to* play ball with the Union . . . they're cooperative,” this does not subtract from the fact that Sasser equated cooperation with giving preference to union members at that time, and that there was a rigidity in his understanding which could have been grounded only in compulsion. Compulsion is further proved by Sasser's May 29 statement to Robert Eley that Eley would have to get a new referral from Fisher before he could return him to work; and also the fact that sometime between May 20 and July 11, 1954, when Sasser needed two men immediately, the first thing he did was to try desperately to reach Fisher. (Emphasis added.)

3. As to Local 47's understanding and practice under Article VII of the 1953 and 1954 contracts, we look to one of its bylaws, and to the testimony of Virgil Fisher, its business agent, and of Edward Kranenberg, each of whom had been union members for many years.

In about 1943 or 1944 Local 47 passed a bylaw reading as follows:

Any member of Local No. 47 found working with any man not holding a Permit or Union Card shall be called before the Executive Board and fined accordingly.

Since then this bylaw has not been changed, according to the knowledge of Business Agent Virgil Fisher, who has been a member of the Local at all times since then, and during at least one recent year was its president. Asked whether it had been enforced since the amendment of the Act in 1947, Fisher replied, "I know of no instance of any member of Local 47 that has been found . . . working with anyone without proper credentials." Thus Fisher did not deny that it had been enforced but stated in substance that the question had not arisen because all men on all jobs had the proper credentials. The entire record indicates that "proper credentials" included membership in the Local or a referral from it. Although Kranenberg testified that the rule had never been enforced, this is highly unlikely inasmuch as closed-shop conditions did not become illegal until 1947, several years after it was passed.

Fisher's testimony established that, at least during the 1½ years that he had served as its business agent just prior to his testimony, Local 47 gave preference to its members over nonmembers in the filling of jobs. Fisher testified in substance that when a request for men comes from an employer to the Local, Fisher seeks first to fill the vacancies with members of Local 47: "I'd try to get members of Local 47 if I could. That is what I'm paid for." ". . . when I have exhausted the membership of Local 47 and I still don't have a sufficient amount of men to refer to the employers, then the next step is to try to secure referral mechanics to supply the demand. . . ." Fisher stated further that if there are not enough jobs to take care of all the members of the Union, he would not send any referral men to any of those jobs. He explained, in substance, that the construction industry is seasonal, that the employment peaks occur in the fall and mid-spring, that "you either carry a membership in your local to take care of the peak and let them loaf half of the time, or you are going to take an average and there will be a certain time when you will have to use a cushion

there to take up the peak," that when Local 47 cannot supply the need from its own ranks, then under Article VII "we will endeavor to secure the number of men that is necessary and refer them to (the employers) to complete their contracts. . . ."

Fisher's testimony indicates further that he, on behalf of Local 47, issues referrals under two sets of circumstances: first, when an employer has already employed a nonmember of Local 47 and the employer requests a referral for him—in which event Fisher issues the referral "as soon as I have knowledge that the individual is working"; second, when Fisher receives "a call for employees from the employer greater than the amount of Local Union manpower and I am able to secure someone who will agree to go over and work for him. . . ." When Fisher issues a referral to a nonmember, he testified the employer is not bound to employ him. When a request is made for a given number of men, it is Fisher who determines which of that number shall be members and which, if any, nonmembers of Local 47. On cross-examination he allowed that "it's my job to see that there is work for" as many members of Local 47 as is possible, that a part of his duty is to give them preference.

When men ask for referrals, it is Fisher's general practice to ask them if they belong to any union, and if their dues are paid up in any union connected with the building trades.

No charge is made for the referrals; and the contracting parties have never set a limit on the number of referrals to be issued by the Local.

Until November 1954, referrals were renewed every 30 days for nonmembers who were employed on the renewal date, but not for nonmembers who were not employed. The system of renewals was abandoned in November 1954 because, as well as Fisher remembered, a member, having returned from a sojourn working in another jurisdiction, advised that it might be some evidence of a violation of the Act.

Fisher testified that the reason for having referrals is for identification and classification, to keep track of the men who are working in the trade in Local 47's jurisdiction, while they are working. The purpose of a referral when Fisher is sending a man over to the job: "It acts as an introduction to the employer and also serves as an identification to the other crafts... that he has been referred there by Local Union 47." The purpose when the man is already on the job is that the referral serves as identification to the other craftsmen on the job and serves to alleviate quite a few jurisdictional problems. A further purpose, in either case, is that having a record of who is working on a given job enables Fisher to check and see that the employer makes a contribution to the welfare fund on behalf of all employees, referral men as well as union members.

Fisher testified further that when a nonmember requests a referral, Fisher gives it to him only if Fisher has a job to fill—that is, only if he has a current call for men from an employer. Fisher does not keep a list of nonmembers who are seeking employment in the trade. In substance this means that while constantly seeking jobs for members Fisher can have a short memory as to which nonmembers are seeking jobs. Under this system it is possible for a nonmember to be refused a referral on Monday because on that day Fisher had no call for men, and for Fisher to fill all calls for men the next day with members of the Local.

It is the undenied testimony of Fisher that nonmembers as well as members get paid the same in all respects for travel time—despite the clauses in the contracts which cover members only.

Beginning in February 1954, Local 47 instituted a practice of requiring that all referrals be picked up at the union hall in Lansing, Michigan. In the case of Robert Eley, who lived near Grand Rapids, this meant a round-trip drive of

134 miles from and to his home once a month. The reason for this change in practices was not explained.

4. That the practice of Respondent Company and Local 47 under the contracts required either membership in Local 47 or a referral from it as a condition of employment is strongly suggested by the fact that Robert Eley found it necessary to obtain a renewal of his referral at intervals of about 30 days during the several years he worked for Respondent Company. If Eley had not considered it compulsory for him to have a current referral in order to hold his job, it is a fair conclusion that he would not have bothered getting the referrals, especially during his last 4 months when he had to make a long drive each month to obtain one. The abandonment of the 30-day renewal practice in November 1954, did not alter the compulsory requirement of a referral at the beginning of employment. That under their mutual practice and understanding the Local was the sole source of supply of asbestos workers was amply borne out by Sasser's testimony, considered above. That Fisher shared this understanding and practice was indicated by his response to the question as to how the number of referrals was determined under Section VII of the 1953-54 contract. Fisher replied,

I'll have to give it a moment's thought. I'll answer it as best I can. There are so many different angles entered into in the construction business. I would say that the amount of work in the asbestos field at the time of the request would determine quite a bit the number of insulators requested from the employer. All work covers all construction, the amount of work, the amount of men. It is pretty simple to figure that out.

A fair construction of this testimony, in the light of the entire record, and particularly in the light of Fisher's testimony concerning the "average" composition of the Local, is that the Local supplies asbestos workers for all

workers for all construction within its jurisdiction. This construction confirms the conclusion herein reached that Local 47 was the sole source of supply of asbestos workers for Respondent Company.

That Local 47 intended to continue as the sole source of supply, and to protect itself in that role, was attested by the continued existence of its unchanged bylaw which in substance barred its members from working with any asbestos workers who were not either members of Local 47 or on referral from it.

That Local 47 was not only the sole source of supply but in fact was in control of the hiring, was established by Fisher's admission to Robert Eley on June 3, 1954—found below—to the effect that the Local was going to issue no more referrals, that "they were going to handle the work themselves." Fisher's assumption behind this statement that by withholding referrals he could preserve the work for Local 47 members, shows the existence of an understanding between the Local and Respondent Company concerning the employment of asbestos workers.

As has been seen above, in filling jobs Local 47 gives preference to its own members. As is found below, on May 20, 1954, Ralph Sasser told Eley that "we have an agreement with the Local to keep all our cardmen in work." It follows from this, and I conclude, that the Respondent Company shared with the Local the understanding and practice of giving preference in the holding of jobs to Local 47 members over nonmembers.

b. In the case of Robert Eley

The General Counsel contends that the May 20, 1954, separation of Robert Eley from his employment with Respondent Company was a discriminatory discharge or lay-off. Respondent Company contends that Eley quit.

With an exception or two of short duration, Eley had worked for Respondent Company steadily for about $3\frac{3}{4}$ years, mostly as a mechanic and always on a referral basis from Local 47. A mechanic is a journeyman in the trade; an improver is an apprentice. He was regarded by the management of the Company as a competent and responsible worker.

Throughout his employment with Respondent Company Eley obtained a referral from the business agent of Local 47 at about 30-day intervals; and due to the change in the Union's practice effective in February 1954, mentioned above, the referrals he obtained thereafter, namely in February, March, April, and May, he had to pick up at the union hall in Lansing. Eley considered having to get renewals at all, and finally having to drive so far for them, an imposition. At all times of concern herein he was a member in good standing of another building trades union in Grand Rapids: Operators, Plasterers and Cement Finishers, Local 115.

On April 19, 1954, Eley wrote the business agent of Local 47, Virgil Fisher, pointing out that he had worked at the insulating trade for $7\frac{1}{2}$ years, stating that he would like to continue to do so, but as a member of Local 47, and requesting that Fisher forward him an application. Fisher replied, in writing, that he did not have the authority to issue applications, that anyone asking for an application must appear before the executive board of Local 47 and make his wishes known, that the board met on the first Friday of each month in Lansing, Michigan. Although the date of this letter was not included in the stipulation concerning it, it is fair to assume, and I do, that it was written shortly after Fisher received Eley's letter of April 19. In a memorandum dated June 9, 1954, which Eley sent to the International Union, he stated that he then appeared before the executive board at its "next" meeting, which would have been held on the first Friday in May 1954, which was May

7. In the memorandum he stated further that the executive board did not give him a definite answer, that Fisher said he would let him know after a meeting between the Union and some contractors the following Thursday, and that he had never heard further from Fisher concerning his application. Eley testified without contradiction that Fisher told him "that they would have to have a meeting between the contractors and the Executive Board of Local 47 to determine how (many) men each contractor was needing." Eley's memorandum stated further, in substance, that he had been trying, without avail, to get into Local 47 for 5 years, and had discussed the matter with its three business agents during that period.

On May 10, 1954, Fisher issued Eley a referral to work for Respondent Company, at the bottom of which in open space not calling for further information Fisher wrote, "Central Paper—exp. in 30 days." Fisher testified that it was customary for him to write the job or area where the referred person would work, that it was customary at that time to issue referrals for only 30 days, but given ample opportunity, he offered no convincing reason for writing the obvious and what everybody concerned already knew—that the referral would expire in 30 days.

On May 20, 1954, some 20 to 26 employees, all but possibly 1 or 2 being members of Local 47, became out of work when the job they were working on in Montague, Michigan, closed down. In the days immediately preceding this Fisher had contacted a number of employers for jobs. On and after May 20, he sought jobs for these men, contacting some 6 contractors. The record does not disclose how many employees he placed, but some of them he was unable to place and they left the jurisdiction of the Local. Others whom he could not assist just waited. Fisher did not know whether he ever succeeded in placing them all. At about that time there was still on, or had shortly before been on

in the area, a carpenter's strike which slowed down the building industry and ultimately retarded insulating work.

The first employer Virgil Fisher telephoned on May 20 was Thomas Stafford, president of Respondent Company. Fisher told him of the group of men without work and asked Stafford if he could use any of them. According to Stafford and Fisher, Eley's name was not mentioned. Stafford assumed that Fisher was talking about union members, a correct assumption under all the circumstances.

Stafford then told Ralph Sasser, his so-called contract manager, of Fisher's call and need and, according to Stafford, "instructed him if possible to take on what men he could." In Sasser's language, Stafford "told me to try to make room for any union men that it was possible for us to hire," to "look over the work on hand and see if it were possible to absorb any of the men that were available." Stafford testified that he gave no instructions to lay off anyone to make room for any of the union men. He testified also that Sasser replied that he did not want to take these men, and indicated to Stafford that he did not like those men. Although Sasser challenged this, Sasser was an unsatisfactory witness and I do not credit his testimony as against Stafford's. Sasser was not a forthright witness, was evasive, and professed a poor memory. Further, on June 3, Sasser told Eley he did not want to hire those men because they were not dependable workers.

Stafford testified further that at this point in their relationship Sasser, one of his top supervisors, was not keeping him well-informed concerning the business, that relations between them were somewhat strained. It is a fact that just over 7 weeks later, on July 11, 1954, Sasser left the employ of Respondent Company and then or shortly thereafter became president of a competing corporation in the same line of business, which position he occupied at the time of his testimony herein.

According to the credited testimony of Virgil Fisher, he talked with Sasser twice that day, May 20, presumably over the telephone. The first time Sasser told Fisher that he was going to Muskegon that day and would let him know later whether he could use any men there. Insofar as the record shows the only job Respondent Company then had going in Muskegon was the Central Paper job where Eley and three other men were then working. Later that day, presumably after Sasser had been to Muskegon, Sasser again called Fisher and told him that he could use two mechanics at the Central Paper job. The following day two of the men began working for Respondent Company, both of whom lived in Muskegon and both of whom were members of Local 47. They were Bernard Wines and Henry Grebel. As Sasser told Fisher he could use these men at the Central Paper job, "I find that they were assigned to that job and that they went to work on that job May 21. The record does not disclose how long they worked on that job, but Wines worked steadily for Respondent Company until early August 1954 and Grebel worked until the week ending June 4, 1954."

While Sasser was at the Central Paper job in Muskegon that day, May 20, occurred the incident of primary concern herein, which the General Counsel contends was a discharge of Eley in order to make an opening for a member of Local 47, Wines or Grebel; which Respondent Company and Local 47 contend in substance was a voluntary quit by Eley in order to force his way into the Local—and possibly with the collusion of Sasser.

According to the credited testimony of Robert Eley, a forthright and credible witness, Sasser came over to Eley at the Central Paper job that afternoon and told him that the men at the Montague job were being fired, that there would be a crowd of men out of work, that "it might be a good idea if you didn't show up on the job tomorrow." Sasser allegedly added, "You know, we have an agreement

with the Local to keep all our cardmen in work," and also that "if they came down here on the job looking it over and saw a referral man working and them not, there would be some trouble." According to Eley, Edward Kranenberg, who had overheard the above, then affirmed Sasser's sentiment and added, "You might as well take your tools home because . . . you probably won't be coming back to this job. . . . Bernie Wines lives here in Muskegon and if there is any work in Muskegon, Bernie Wines will get it. . . . So, it would be a good idea if you didn't show up or come back." Then, after Kranenberg had left, Sasser said to Eley, still according to the latter, that there was a lot of work then in Michigan, that it should not take more than a week or 10 days to place the men, that "until they have their men placed on jobs, I can't put you to work, I can't keep you working. . . . We've got to play ball with the Union . . . they're cooperative. . . . It would be the best thing if you would wait until this blew over and at that time I'll call you back to work." As Eley was packing his tools he said to Kranenberg that inasmuch as he was being laid off he might as well go fishing the next day. Kranenberg said that that would be a good idea. Eley left with his tools just before or at the closing hour, 4:30 p.m., and was paid for a full day's work that day.

Sasser professed to remember little of the incident. It was his best, though feeble, recollection, that he told Eley something to the effect that there were spare mechanics available because of the shutdown in Montague, and also that someone said something about going fishing.

The testimony of Sasser and Edward Kranenberg concerning this incident contains inconsistencies which are irreconcilable and cannot be credited. Sasser stated in substance that it was his custom when going on a job to speak to the foreman first, and that on this occasion he spoke to Kranenberg before speaking to Eley, probably talking over with him the status of the job and probably telling him

that the men were leaving the Montague job. Kranenberg testified positively that Sasser merely greeted him in

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passing, went to Eley, and had a conversation with Eley, Kranenberg not being present but going about his business. He stated further that as Sasser was leaving, at nearly quitting time, Sasser called to Kranenberg to have Eley bring his tools in—but that Eley was already packing his tools when Kranenberg relayed Sasser's instructions. Further, Kranenberg testified that he had no conversation with Sasser about the men being laid off at the Montague job—which is unlikely inasmuch as Sasser had gone to the Central Paper job that afternoon partly to discover for Fisher whether any of the latter's men could be absorbed there—a situation concerning which Kranenberg would be particularly informed. A further inconsistency is Kranenberg's statement that he had been keeping Sasser informed all that week (May 20 fell on Thursday) of an impending lathers' strike which would bring the insulators' work at Central Paper to a sudden halt—as against Sasser's testimony that he had not heard of a lather's strike which would bring the insulators' work at Central Paper to a sudden halt—as against Sasser's testimony that he had not heard of a lathers' strike in prospect or had no memory of it. A further inconsistency is the testimony that, known in advance by Sasser and Kranenberg, the Central Paper job closed down temporarily the following day because of a lathers' strike—which does not jibe with sending Wines and Grebel to work there that day.

Certain additional facts and considerations may contribute to the solution of this portion of this case:

a. During the years that Eley had worked for Respondent Company, the usual practice was to transfer him to another project when the project he was working on was completed. In the present instance he was not transferred.

b. Sasser testified that at times Eley requested vacations from him, and that it was Sasser's recollection that Eley always took his vacations by going deer hunting. Sasser "couldn't say" as to whether each of Eley's vacations was in fall of the year. It is clear that in the present instance, which came during the spring, Eley did not ask off to go deer hunting.

c. Sasser confirmed an opinion previously expressed by him in an affidavit to the effect that he thought anyone acquainted with unionism and being on a permit would have taken off under the circumstances.

d. Eley admitted that while he was on the Riverside School job—which counsel suggested but Eley did not confirm was during the spring of 1954⁵—he told Virgil Fisher that "under the Taft-Hartley Law a man has a right to belong to any organization he wishes." Respondent Company and Local 47 offered this fact as an element of proof that Eley quit his job on May 20 (and did not thereafter press for reinstatement) as a means of forcing his way into Local 47. Respondent sought, with questionable success, to show that Sasser was assisting Eley to become a member of Local 47. Respondents' theory as to how Eley's action (assuming it was so-motivated) would accomplish his objective of becoming a member of Local 47 was not developed at the hearing.

e. Some 9 days after his termination, on May 29, Eley returned to Sasser and, according to Eley's credited testimony, asked Sasser if the "local men were placed on jobs and if I could go back to work, and Mr. Sasser said no, that the cardmen that were out hadn't been placed and he said, 'Until that time that they get them placed, I can't put you back to work.'" Eley then showed him his referral, which on its face expired 30 days after May 10. Sasser said that that referral was not any good any more, that "You'll

⁵ One of Eley's timecards shows he worked at the Riverside School on January 11 and 12, 1954. Of course he may have worked there during other weeks also.

have to get another new one issued from Mr. Fisher before I can put you back to work." A few days later, on June 3, Eley again asked Sasser when he could return to work, and Sasser replied that the cardmen were still out, that he did not know when they would be back, but as soon as things broke Sasser would call Eley and the latter could return to work. Then Eley spoke to Fisher, who said, according to the former, that they were not going to issue any more referrals, that "they were going to handle the work themselves." Fisher's version was that he refused Eley a referral because he had no calls for men. Under all the circumstances, Eley's version is credited. On June 8, Eley again asked Fisher for a referral, and according to Eley, Fisher said that they were not going to issue referrals to any men who had already had a referral. Eley then said that he would have to see a lawyer about getting his job back. Fisher denied the first part of Eley's version, and said he did not remember any threats by Eley—although Fisher acknowledged his memory was a little vague on this conversation. Eley's version is credited.

f. During the period May 20 to June 10, 1954—during which, as seen just above, Eley made 3 efforts to get reinstated—Respondent Company hired as new employees some 5 mechanics, including Wines and Grebel, who were mechanics, and 1 other who was either a mechanic or an improver. Wines and Grebel started work May 21. One of the others started work on June 3; 2 others started June 10. From June 10, 1954, until May 27, 1955, the date of the issuance of the complaints herein, Respondent Company hired as new employees not less than 35 asbestos workers. Thomas Stafford testified that during May and June 1954, the labor need of his business "was steadily increasing. There is no bush to hide behind that we did not have work to reemploy Eley. There is absolutely none. We had plenty of work, there is no question." In substance the Company contended that Eley had no right to reinstatement or back

pay after Sasser left July 11, 1954, because thereafter Eley never applied for reinstatement. If Eley was discriminatorily discharged, it was not necessary for him to make application for reinstatement at all. If in fact, as alleged by Respondents, he quit, he made application for work again on May 29 and June 3, and learned then from the lips of Sasser that any further applications were futile as long as there were any union members available for jobs. The "Board has consistently held that where an employer engaged in a discriminatory hiring practice and where such practice is communicated to applicants for employment, albeit when no jobs for them are available, an inference and finding is warranted that further application would be futile because from the existence of the discriminatory practice it is clear that the same discriminatory conditions would be attached whenever the jobs became available." ⁶ In substance the Company contended also that it refused Eley reinstatement because of a statement he made in his memorandum of June 9, 1954, to the International Union. In the light of the entire record this defense is not credited. In substance Local 47 contended Eley was not reinstated because it had no requests for men when he requested referrals. As I find herein that Local 47 was the sole source of supply of asbestos workers for Respondent Company, and as over 35 asbestos workers were employed by the Company during the period Eley was not reinstated, this defense by Local 47 is not credited.

g. Respondents' theory that Eley quit his job in order to force his way into Local 47 was not spelled out in the record or in the briefs. Forcing his way implies compulsion and pressure. The record discloses no pressures Eley brought to bear upon Local 47 either before or after his separation May 20, 1954. Nor does the record reflect how, if at all, Eley expected to, or could have with the means at his disposal, brought more pressure on the Local to admit

⁶ *Consolidated Western Steel Corporation*, 108 NLRB 1041, 1044, and cases cited therein. *Myles Worstell, and Carpenters*, 114 NLRB No. 86.

him to membership while he was unemployed than while he was working for Respondent Company. Although Eley was frustrated in his continuing efforts to become a member of Local 47, and although he thought he had a right under the Act to join Local 47 if he wanted to, the record does not disclose how he thought he could accomplish this objective—other, possibly, than filing a charge against it. If filing a charge with the Board is urged as such a pressure, it should be noted that he filed no charge against Local 47 until October 8, 1954, some 4½ months after his termination.

Nor does the record disclose any other motive for Eley's quitting. He had friendly relations with both the Company and his fellow workers, was well regarded by his superiors in the Company, including its president, and evidently preferred insulating work to his other trade of cement finishing.

h. Thomas Stafford, president of Respondent Company, testified that on May 20, 1954, he told Sasser to make an effort to place the men who had been released from the job in Montague, Michigan, "because there was trouble brewing in the contract department (of Respondent Company) over the Eley case. . . . I was aware that there was a problem." From this it appears that at this moment Stafford thought there was trouble ahead for the Company if it continued to employ Eley. And although Stafford for some time theretofore had given Sasser almost free reign in the running of the contract department, his testimony indicates that in this instance he gave Sasser not a suggestion, but an instruction, to try to place the Montague men. In this frame of mind, it is highly probable that in his instruction to Sasser, Stafford made some mention of Eley, although both Stafford and Sasser denied this. So forceful did Stafford make his instruction to Sasser that the latter undertook to carry it out contrary to his own better judgment.

i. It is undenied that Sasser initiated the conversation

with Eley on May 20, and that if Eley quit he did so as a direct and immediate result of something Sasser said to him. In his testimony Sasser allowed that although he knew nothing about "unionism," he thought that anyone acquainted with unionism and being on a "permit" would have taken off under the circumstances. The only circumstances Eley knew at this point were those pointed out to him in that conversation by Sasser.

In conclusion—in view of the inferences above, as Eley was a far more credible witness than Sasser, as most of the statements attributed to Sasser by Eley on May 20 were undenied by Sasser, and on the record considered as a whole, I credit Eley's version of his May 20 conversation with Sasser and his conversations with Sasser after his termination. It is held that on May 20, Sasser told Eley it would be a good idea if he did not show up for work for awhile in order to prevent trouble with the Union, and that Sasser could not keep Eley working as long as the union men then out of work were not placed. It is held further that on May 29, 1954, when Eley applied for work Sasser told him that the union members were not placed, that until they were placed he could not put Eley back to work, that Eley's referral was no longer any good and that he would have to get a new one from Fisher before Sasser could return him to work. I hold further that on June 3, 1954, when Eley again applied for work, Sasser told him that the union members were still out, that when they were back to work Sasser would call Eley and return him to work.

5. Conclusions

Section 8(b)(2) of the Act provides, in part, that it shall be an unfair labor practice for a labor organization "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)." Section 8(a)(3) prohibits discrimination in regard to hire or tenure of employment or any term or condition of em-

ployment or any term or condition of employment to encourage or discourage membership in any labor organiza-

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tion. The sole exception to this general provision is a proviso permitting a union shop under certain conditions. No other arrangement encouraging union membership is valid. *Radio Officers' Union v. N. L. R. B.* 347 U. S. 17, 40-42.

It is now well settled that any contract, practice, or arrangement, oral or written, requiring that employees must be members of a union or have clearance from it as a condition of being hired or continuing their employment, or that union members shall receive preference in employment, is violative of the Act.⁷

In my opinion the testimony here fully establishes that there was a stronger understanding between Local 47 and Respondent Company under the contracts than that the former would supply the latter with asbestos workers when requested.

⁷ *Construction Specialties Company*, 102 NLRB 1542 enfd. 208 F. 2d 170 (C. A. 10); *Operative Plasterers' and Cement Finishers' International Association, Local 555, AFL (Lee E. Parker)*, 110 NLRB No. 79; *South Texas Chapter, Associated General Contractors of America, Inc.*, 107 NLRB No. 190; *Operative Plasterers' and Cement Finishers International Association of the United States and Canada, AFL, Local 511 (Earl V. Johnson)* 110 NLRB No. 38; *Mohawk Valley and Vicinity District Council, Brotherhood of Carpenters and Joiners of America*, and *Local No. 1261, United Brotherhood of Carpenters and Joiners of America (Glen W. Cooley)*, 109 NLRB No. 84; *Local Union 595, International Association of Bridge, Structural and Ornamental Iron Workers, AFL (Clyde Crider)*, 109 NLRB No. 12; *Seabright Construction Company*, 108 NLRB No. 6; *Local 13, International Brotherhood of Boilermakers, Iron Ship Builders, and Helpers of America, AFL (The Babcock & Wilcox Co.)*, 105 NLRB 339; *Mundet Cork Company*, 96 NLRB 1142; *Alaska Chapter of the Associated General Contractors of America, Inc.*, 113 NLRB No. 7; *Eichleay Corporation v. N. L. R. B.*, 206 F. 2d 799, 803, 805 (C. A. 3); *George D. Auchter Co.*, 102 NLRB 881, 885, enfd. 209 F. 2d 273 (C. A. 5); *International Brotherhood of Boilermakers, etc.*, 94 NLRB 1590; *Consolidated Western Steel Corp.*, 108 NLRB 1041; *Myles Worstell, and Local 2023 of the United Brotherhood of Carpenters and Joiners of America, AFL; Millwright Local Union No. 2484 and H. B. Clem, Financial Secretary, United Brotherhood of Carpenters and Joiners of America, AFL*, 114 NLRB No. 101; *Daugherty Company, Inc.*, 112 NLRB No. 122; *International Longshoremen's and Warehousemen's Union*, 90 NLRB 1021, 1022.

As found above, Local 47 was the sole source of supply of asbestos workers for Respondent Company, and its own bylaw prohibited its members from working with any who were not either members of Local 47 or on referral from it. As found above, Local 47 was not only the sole source of supply, but in addition it in fact maintained control of who would do the asbestos work for Respondent Company—as shown by Fisher's statement to Eley that "they were going to handle the work themselves." As found above, and not disputed in this record, in the filling of jobs Local 47 gave preference to its own members.

That Sasser, who participated in the negotiating of the 1953 and 1954 agreements, considered himself bound to obtain clearance from the Local for all asbestos workers was amply borne out by the evidence, as found above. As has also been found above, Respondent Company shared with the Local the understanding and practice of giving preference in the holding of jobs to Local 47 members over non-members—as shown by Sasser's statement to Eley that "we have an agreement with the Local to keep all our cardmen in work."

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The unlawful hiring practices disclosed in this record could not have been possible without the understanding, cooperation, or participation of both the Company and the Local. That the practices had their roots deep in the long history of the relationship between the parties is undoubtedly true, but this does not make them lawful.

The treatment of Robert Eley on and shortly after May 20, 1954, further proves the existence of an understanding or arrangement between the parties, and the application of such arrangement.

On May 20, Sasser, Eley's top supervisor, referring to the contract with the Local which required the Company to keep "all our cardmen in work," suggested that Eley absent himself from the job the next day, and then told him that he

could not give him any more work until all the union members had been placed. On the same occasion Supervisor Kranenberg told him to take his tools home and that he would not be coming back to that job. On the basis of the entire record considered as a whole I conclude that these words by Sasser and Kranenberg amounted to and constituted a discharge of Eley under the arrangement between the Company and the Local and because Eley was not a member of the Local. The following day the Company placed two union-member mechanics (Eley was a mechanic) on the same job he had left. On June 3 one other started to work for the Company and on June 10 two others. Meanwhile on May 29 and June 3, Eley reapplied to Sasser for employment and was put off on the grounds that he could not take him back until all the union members were placed and that in any case he would have to get a new referral from Fisher. Meanwhile on June 3 and 8, Eley asked Fisher for a referral and was refused on the ground that the Local was going to handle the work itself and was not going to issue any more referrals to those who had had referrals. Under all the circumstances of this case it is clear, and I conclude, that during this period Eley was denied reinstatement under the arrangement between the Company and the Local and because Eley was not a member of the Local.

On the basis of the entire record considered as a whole I hold that as interpreted, administered, and enforced by Local 47 and Respondent Company, the 1953, 1954, and 1955 contracts required membership in or referral from Local 47 as a condition of employment with Respondent Company, members being given preference. Thus these contracts amounted to preferential hiring contracts no longer permitted under the Act.

By interpreting, administering, and enforcing the 1953 contract as a preferential hiring contract from 6 months prior to the filing of the charges herein until its duration (April 8, 1954, to June 30, 1954, in the case of Local 47;

May 18, 1954, to June 30, 1954, in the case of the Company), Respondent Local 47 violated Section 8(b)(2) and (1)(A) of the Act, and Respondent Company violated Section 8(a)(3) and (1) of the Act.

By entering into, interpreting, administering, and enforcing the 1954 and 1955 contracts as preferential hiring contracts, Local 47 violated Section 8(b)(2) and (1)(A) of the Act, and Respondent Company violated Section 8(a)(3) and (1) of the Act.

On the basis of the entire record considered as a whole I hold that on May 20, 1954, in the enforcement of the 1953 contract as a preferential hiring contract, Respondent Company discriminatorily discharged Robert Eley because he was not a member of Local 47, Respondent Company thereby encouraging membership in Respondent Local and thereby violating Section 8(a)(3) and (1) of the Act. Although there was no proof that Local 47 specifically requested the Company to discharge Eley, it is clear under

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Board precedent that as the contract has resulted in actual discrimination, Local 47, by enforcing the contract, "must be deemed to have caused such discrimination."⁸ Accordingly I hold that Local 47 caused Respondent Company to discriminate against Eley in violation of Section 8(a)(3), Local 47 thereby violating Section 8(b)(2) and (1)(A) of the Act.

On the basis of the entire record considered as a whole I hold further that at all times between May 20, 1954, and July 5, 1955, in enforcing the 1953, 1954, and 1955 contracts as preferential hiring contracts by withholding a referral from Robert Eley because he was not a member, Local 47 caused Respondent Company discriminatorily to refuse em-

⁸ *Childs Company*, 93 NLRB 281, 285; *Mundet Cork Corporation*, 96 NLRB 1142, 1149; *Construction Specialties Company*, 102 NLRB 1542 enfd. 208 F. 2d 170 (C. A. 10).

ployment to Eley in violation of Section 8(a)(3) of the Act, Local 47 thereby violating Section 8(b)(2) and (1)(A); and Respondent Company, by discriminatorily refusing employment to Eley, thereby encouraging membership in Respondent Local, violated Section 8(a)(3) and (1) of the Act.

It has been found above that one member of The Master Insulators Association—Alexander-Stafford Corporation—has engaged in unfair labor practices under the 1953, 1954, and 1955 contracts to which The Master Insulators Association was a party signatory on their behalf, by its agreement, arrangement, or practice under the contracts with Local 47, and its application of said agreement, arrangement, or practice. It has been stated generally above that another member of said Employer Association, Kalamazoo Asbestos Company, was in violation of the Act by its practice under the contracts. The question arises as to the responsibility of the Employer Association for such unfair labor practices.

The Association never functioned except to negotiate the several contracts. It met just before each bargaining meeting with Local 47 and discussed what positions to take in the bargaining. Otherwise it did not meet at all. It never employed a paid official. It never undertook to tell its members how they should interpret, or conduct their practice under, the contracts, or that their practice thereunder should be uniform.

Nevertheless, as a participant in a common enterprise with Respondent Company and with Kalamazoo Asbestos Company, it was a co-sponsor with them of any unlawful clauses in the contracts and the unlawful practices thereunder. Such co-sponsorship carried with it the responsibility of joint participants in a common enterprise for one another's acts performed in furtherance of the enterprise. Accordingly the Association was jointly responsible with Respondent Company for the unlawful clauses in the con-

tracts and the general unlawful practices thereunder as found above.⁹ As the complaint against the Association did not allege that the Association was responsible for the discriminatory discharge and refusal to reinstate Robert Eley, I do not find that it was.

B. Unfair labor practices committed by the International Union

It has been found above that the 1953, 1954, and 1955 contracts contained certain unlawful clauses, and that as interpreted and enforced the contracts violated the Act. The question arises as to the responsibility of the International Union for these violations.

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The Constitution of the International Union gives the International "supreme ruling authority and supervision over all its affiliated Local Unions. . . . Its power shall be Legislative, Executive and Judicial." The International's president "shall preside at Local Union meetings when he so decides. . . . He shall be an ex-officio member of all Local Union Committees and Boards. He shall have authority to audit Local Union finances and to suspend Local Union officers and appoint their successors pending hearing by General Executive Board or Convention." The General Executive Board of the International "shall have power to reorganize or suspend a Local Union or revoke its Charter when in the opinion of the Board such action is in keeping with the best interests of the Local membership or the International Association." The International's Constitution sets forth precise rules for the levying of initiation fees, fines, assessments, and dues by the local unions, and the issuance of withdrawal, traveling, and transfer cards.

⁹ *George D. Auchter Company, et al.*, 102 NLRB 881, enf'd. 209 F. 2d 273 (C. A. 5); *Paul W. Speer, et al.*, 98 NLRB 212; *Osterink Construction Company*, 82 NLRB 228; *E. F. Shuck Construction Co., Inc.*, 114 NLRB No. 116. Cf. *Pacific American Shipowners Association*, 98 NLRB 582.

The Constitution provides further that "Local Unions are subordinate branches of the International (Union) and as such can be reorganized, suspended or disbanded with charter revocation by action of the General Executive Board or Convention."

With reference to referrals, the International Constitution provides, "Referral cards shall be issued for the purpose of identification in directing other than our membership for employment. There shall be no charge of any nature or collections in connecting with the issuance of Referrals."

With reference to collective bargaining, the Constitution provides, "Local Unions shall work under trade agreements as adopted by the International Association in Convention assembled. . . . Local Unions shall have power to fix wages within their chartered jurisdiction or trade agreement radius. Also to regulate the working conditions of either Mechanics or Improvers, in any manner they deem proper except in the restriction of individual working effort, or in opposition to the International form of Joint Trade Agreement."

The Constitution provided further that "Local Unions as subordinate branches of the International Association can only exercise local autonomy in matters upon which the International Constitution and By-Laws are silent. They shall function within their chartered jurisdiction and in such other territory covered by signed trade agreement with employers"; and also that "Local Unions shall exercise local autonomy when it does not conflict with laws of the International Association. . . ."

As provided in the Constitution, the International Union provides certain supplies to the local unions, including referral blanks and "international Joint Trade Agreements."

The preamble to the 1953, 1954, and 1955 agreements reads as follows:

The following Agreement is not subject to change by a Local Union. Any provision not in conflict with its letter and spirit may be agreed upon and attached to it in the form of addenda.

It provides for collective bargaining and as such must recognize as its principals Local Unions and Insulating Contractors' Associations composed of Insulating Contractors known and recognized as such within the trade. It is understood and agreed that the approval by the International Association as to form and substance of this Agreement is only for the purpose of indicating that the International Association certifies that the said contract is not in violation of the International Constitution and By-Laws and is approved as to form and substance for that purpose only and no other.

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Each contract then recites that it was made and entered into between The Master Insulators Association and Local 47.

The first four pages of each of these contracts consist of many printed words, which were on the original form when it came to Local 47 from the International Union, and a few blank spaces which were filled in as a result of the collective bargaining between Local 47 and the Employer Association. Attached to each of the "International Joint Trade Agreement" (the forms are labelled simply "Agreement," and under that the words, "Master Insulators' Association") are some 3 or 4 pages of "Supplemental Agreement" dealing mostly with travel expense, job stewards, and the welfare fund.

Concerning the supplemental agreement of the 1955 contract there is evidence that a Washington, D. C., attorney participated in the discussion of whether three proposed paragraphs should be included in the supplemental agreement and of how one of them should be phrased. Signing

this agreement on behalf of The Master Insulators Association was Thomas Stafford, then its president as well as president of Respondent Company, and Stephen Dunn, its acting secretary, and a practicing attorney in Grand Rapids, Michigan, who participated on behalf of the Association in the bargaining negotiations leading to the contract.

Thomas Stafford testified, "We were endeavoring to get clarification of paragraphs which we felt were in violation of the law. The local 47 had no attorney and Mr. Dunn wanted to find what the stand nationally was with the Asbestos Workers. . . . He consulted with me about seeing the National about the problem. . . ." From the counsel table at the hearing Local 47's attorney, whose office is in Grand Rapids, stated that he "had been retained by the Local at that time."

On July 1, 1956, the Washington, D. C., attorney, Carlton R. Sickles, on his own letterhead as a practicing attorney wrote Stephen Dunn in Grand Rapids:

Reference is made to our telephone discussions yesterday of the three proposed paragraphs drafted for use in the collective bargaining between Asbestos Workers Local 47 and the Asbestos Insulators Association in that area.

The first paragraph, deleting specific reference to particular articles, would seem to present no difficulty and as modified would provide as set out below:

Nothing contained in this agreement or the supplemental agreement or in any article of this agreement or the supplemental agreement read separately or together shall be construed to constitute a "closed shop" or to provide for conditions which if enforced would constitute a "closed shop."

It is my conviction that the second of the proposed paragraphs would be unnecessary, in light of Article XVII which provides that neither party "Shall con-

tinue in force or create any rules or bylaws conflicting with its provisions," and which appears to have the same intent as the suggested language.

Again, it would appear that the third proposed paragraph would have no place in this agreement between these parties since there is nothing in the agreement which would oblige a party to the agreement to comply with demands made by anyone not a party to the agreement.

A copy of this letter was sent to Business Agent Virgil Fisher of Local 47.

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As originally signed, according to the uncontradicted and credited testimony of Thomas Stafford, paragraph 12 of the supplemental agreement read as follows:

12. *Declaration.* Nothing contained in this agreement or the supplemental agreement or in any article of this agreement or supplemental agreement read separately or together shall be construed to constitute a closed shop or to provide for conditions, which, if enforced, would constitute a closed shop. It is further agreed that the letter dated July 1, 1955, from Carlton R. Sickles, shall apply with respect to questions of interpretation of the new agreement.

To be noted is that this language is word-for-word the same language as was proposed by Sickles in his letter, except for the last sentence. It would appear further that Sickles had modified this paragraph while it was in his hands—for he stated in his letter, "The first paragraph, deleting specific reference to particular articles, would seem to present no difficulty and as modified would provide as set out below":

According to the uncontradicted and credited testimony of Thomas Stafford, "Mr. Sickles objected to his name appearing. It was in a reference to a letter. We took this matter, Mr. Fisher immediately called me. I took the mat-

ter up with Mr. Dunn. We discussed the matter. It was of no value whatever, so far as we were concerned, and we authorized the exchanging of this sheet for a new sheet on which Mr. Sickles' name was not there." So by agreement of the parties, paragraph 12 was changed by deleting the last sentence—leaving it as it had been phrased by Mr. Sickles.

Conclusions. It is clear that as between Local 47 and the International Union, only the former was a party to the 1953, 1954, and 1955 contracts. The fact that the International Union supplied the master agreements did not make it a party to the contracts or mean that it was responsible for their execution, in the absence of any evidence that the International Union participated in their negotiation. *Heating, Piping and Air Conditioning Contractors etc.*, 102 NLRB 1646, 1654. The clauses found above to have been unlawful on their face because they discriminated in favor of Local 47 members over nonmembers in conditions of employment, were contained in the supplemental agreements not supplied by the International and for which the International Union could not in any case be held responsible. The clauses found above to have been unlawful as interpreted, administered, and enforced by Local 47, Respondent Company, and the Employer Association were not shown by any evidence whatsoever to have been interpreted, administered, and enforced in the same manner by the International Union. In fact the record is devoid of any evidence as to how the International Union interpreted, administered, or enforced said clauses, or that it did so at all.

The General Counsel contended that by its advance approval of the master agreements the International Union in effect ratified them and thereby became a party to them. But the contracts recited that this advance approval was solely to indicate that the International certified that the contracts were not in violation of the International's Con-

stitution and Bylaws, and there is no evidence that it was for any other purpose. The Employer Association executed the contracts knowing that this was the purpose of the International's advance approval and knowing that the other party to the contract was Local 47 and not the International Union.

The General Counsel contended in substance that the International Union should be held responsible for the execution of the 1955 contract because through its attorney, Carlton R. Sickles, it participated in the negotiation of that contract. It is true, as recited in Sickles' letter, that

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during the negotiation period Sickles consulted with Dunn of the Employer Association concerning certain clauses for the contract. It is also true that Sickles' suggestions were accepted by the Employer Association and Local 47. In my judgment it was not established, however, that in advising Dunn as he did Sickles was acting as a bargaining representative of the International Union such as to make the International a party to the contract or responsible for it by participating in its negotiation. The record is silent as to Sickles' authority or apparent authority to speak for the International Union on this occasion or generally, and such authority or apparent authority may not properly be inferred from the fact that Dunn had consulted with Stafford about "seeing the President of the National about the problem" and the fact that some 2 months later Sickles represented the International Union at the hearing herein. Attorneys for international unions do not necessarily bind the international unions every time they give requested advice to local unions or to employers bargaining with local unions.

As the International Union did not participate in the negotiation of and was not a party to the contracts or to the interpretation or enforcement of them or the practice under them, and was in no way connected with the discharge

and nonreinstatement of Robert Eley, I conclude that the General Counsel has failed to prove that any unfair labor practices were committed by the International Union. The complaint against it should therefore be dismissed.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

Respondent's activities, set forth in Section III, above, occurring in connection with Respondent's operations described in Section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that certain of the Respondents have engaged in the unfair labor practices set forth above, I recommend that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

By letters dated June 23, 1955, the International Union informed Eley and Local 47 informed both Eley and Respondent Corporation that the unions had no objection to the Company's employing Eley. As soon thereafter as was practicable under all the circumstances, on July 5, 1955, Respondent Company returned Eley to work.

As the practices of Local 47 and Respondent Company under the 1953, 1954, and 1955 contracts caused Eley to be discharged May 20, 1954, and not to be reinstated until July 5, 1955, it will be recommended that they jointly and severally make him whole for any loss he may have suffered as a result thereof by paying to said Robert Eley an amount equal to that which he would have earned as an asbestos worker from May 20, 1954, until July 5, 1955, less his net earnings during said period.¹⁰ The computations shall be

¹⁰ *Crossett Lumber Company*, 8 NLRB 440, 497-8; *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

made on a quarterly basis in the manner established by the Board in *F. W. Woolworth Company*, 90 NLRB 289, 291-299.

The geographical scope of the unlawful contracts and practices is wide, covering a number of cities in Western Michigan. In 1955 the Employer Association, a contracting party, had members in Grand Rapids, Kalamazoo, Lansing, Flint, Saginaw, and Bay City. Local 47, the other contract-

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ing party, has no office of its own, but it meets at the Labor Temple in Lansing. The 1955 contract, in naming Local 47 a party to the contract recited that Local 47 was "of Lansing, Kalamazoo, Jackson, Grand Rapids, and Saginaw, Mich." The record reveals that the operations of Respondent Company cover a number of cities. Respondent Employer Association has no office.

It is evident from the above that posting notices at the office and warehouse of Respondent Company, and at the Labor Temple in Lansing would not adequately effectuate the policies of the Act. In order adequately to publicize both to employers and employees, including nonmembers of Local 47, that the Respondents will cease and desist from their unlawful practices found herein, I believe that they should be required to publish notices to that effect in newspapers of general circulation in the cities and towns in Western Michigan where mechanics and improvers have been and will be employed.¹¹ These would include, presumably, Grand Rapids, Kalamazoo, Lansing, Flint, Saginaw, Bay City, and Jackson, Michigan.

Because of the Respondents' unlawful conduct and its underlying purpose and tendency, I find that the unfair labor practices found are persuasively related to other unfair labor practices proscribed and that danger of their

¹¹ *J. J. White, Inc.*, 111 NLRB 1126, 1127.

commission in the future is to be anticipated from the course of the Respondents' conduct in the past.¹² The preventative purpose of the Act will be thwarted unless the order is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7, to prevent a reoccurrence of unfair labor practices, and thereby to minimize industrial strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, I will recommend that Respondents cease and desist from in any manner infringing upon the rights guaranteed in Section 7 of the Act.

Conclusions of Law

1. Alexander-Stafford Corporation and The Master Insulators Association are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 47, and the International Union are labor organizations within the meaning of Section 2(5) of the Act.

3. By entering into, maintaining and enforcing agreements, arrangements, or practices requiring membership in, or referral from Local 47 as a condition of employment, members receiving preference, and by otherwise discriminating in favor of Local 47 members over nonmembers in conditions of employment, Respondent Company and the Employer Association have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a)(1) and (3) of the Act, and Local 47 and the International Union have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

4. By discriminating in regard to the hire and tenure of employment of Robert Eley, Respondent Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

¹² *N. L. E. B. v. Express Publishing Co.*, 312 U. S. 426.

5. By causing Respondent Company to discriminate against Robert Eley in the hire and tenure of his employment, Local 47 and the International Union have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(1)(A)(2) of the Act.

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6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that:

1. The Respondent Alexander-Stafford Corporation, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Entering into, enforcing, or giving effect to any agreement or practice of requiring membership in or referral from Respondent Local 47 as a condition of employment with it except as authorized by Section 8(a)(3) of the Act:

(2) Encouraging membership in Respondent Union or any other labor organization by discriminating in regard to any term or condition of employment of any employee or prospective employee because of membership in or failure to obtain membership in Respondent Union;

(3) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any or all such

activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) Offer to Robert Eley immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed;¹³

(2) Make whole Robert Eley for any loss of pay he may have suffered by reason of the discrimination against him in manner set forth in the section herein entitled "The remedy";

(3) Cause, at its expense, the notice hereto attached as Appendix A to be printed in newspapers having general circulation in each of the cities and towns in Western Michigan in which it has employed mechanics or improvers during the last 3 years;

(4) Post at its office and warehouse in Grand Rapids, Michigan, copies of the notice attached hereto marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by Respondent Company's representative, be posted by said Company immediately upon the receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to mechanics and improvers are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that such notices are not altered, defaced, or covered by any other material;

¹³ Neither the correspondence leading to Eley's present term of employment beginning July 5, 1955, nor the record, established that Eley was then reinstated to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed.

(5) Notify the Regional Director for the Seventh Region in writing with twenty (20) days from the date of the receipt of this Intermediate Report, what steps Respondent Company has taken to comply herewith

2. The Respondent The Master Insulators Association, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Entering into, enforcing, or giving effect to any agreement or practice between itself or Alexander-Stafford Corporation or Kalamazoo Asbestos Company or any other of its members on the one hand and Local 47 or International Association of Heat & Frost Insulators & Asbestos Workers, AFL, on the other hand, which conditions employment upon membership in or referral from said Local 47 or any other labor organization, except under a nondiscriminatory arrangement permitted by Section 8(a)(3) of the Act;

(2) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

(b) Take the following affirmative action which I find will effectuate the policies of the Act:

(1) After receiving from the Regional Director for the Seventh Region copies of the notice attached hereto marked Appendix B, cause, at the expense of The Master Insulators Association, said notice, Appendix B, to be printed in newspapers of general circulation in Grand Rapids,

Kalamazoo, Lansing, Flint, Saginaw, Jackson, and Bay City, Michigan;

(2) Notify the Regional Director for the Seventh Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report, what steps Respondent The Master Insulators Association has taken to comply herewith.

3. The Respondent Local 47, its officers, representatives, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Entering into, enforcing, or giving effect to any agreement or practice with Alexander-Stafford Corporation, Kalamazoo Asbestos Company, or any other member of The Master Insulators Association, or the Association itself, which requires membership in or referral from said Local 47 as a condition of employment with any of said companies, except as authorized by Section 8(a)(3) of the Act;

(2) Causing or attempting to cause Alexander-Stafford Corporation to discriminate against Robert Eley or any other employee or applicant for employment, because they are not members of said Local 47, or in any manner to discriminate against them in violation of Section 8(a)(3) of the Act;

(3) In any other manner restraining or coercing employees of, or applicants for, employment with Alexander-Stafford Corporation in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such

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rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

(b) Take the following affirmative action, which I find will effectuate the policies of the Act:

(1) Notify Alexander-Stafford Corporation in writing that it withdraws all objections to the employment by Alexander-Stafford Corporation of persons who are not members of or on referral from said Local 47 and that it requests said Company to employ persons as asbestos workers and pipe coverers without regard to their membership or nonmembership in, or to their having or not having a referral from, Local 47 or any other labor organization;

(2) Notify Alexander-Stafford Corporation in writing and send a copy to Robert Eley at his home in Grandville, Michigan, that it withdraws all objections to the employment of Robert Eley in the position he occupied prior to the discrimination against him, without regard to his membership or nonmembership in, or his having or not having a referral from, Local 47 or any other labor organization, and without prejudice to his seniority or other rights and privileges;

(3) Make whole Robert Eley for any loss of pay he may have suffered by reason of the discrimination against him in the manner set forth in the section herein entitled "The remedy";

(4) Cause, at its expense, the notice hereto attached as Appendix C to be printed in newspapers of general circulation in Grand Rapids, Kalamazoo, Lansing, Flint, Jackson, Saginaw, and Bay City, Michigan;

(5) Post at the Labor Temple in Lansing, Michigan, copies of the notice attached hereto marked Appendix C. Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by Local 47's representative, be posted by said Union immediately upon the receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to mechanics and improvers are customarily posted. Reasonable steps shall be taken by Local 47 to insure that such notices are not altered, defaced, or covered by any other material;

(6) Notify the Regional Director for the Seventh Region in writing within twenty (20) days from the date of the receipt of this Intermediate Report, what steps Respondent Local 47 has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the date of receipt of this Intermediate Report the Respondents notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring them, or any of them as the case may be, to take the action aforesaid.

It is further recommended that the complaint against the International Union be dismissed in its entirety.

Dated at Washington, D. C., this day of December 1955.

ALBA B. MARTIN,
Trial Examiner.

APPENDIX A**NOTICE TO ALL EMPLOYEES****PURSUANT TO****THE RECOMMENDATIONS OF A TRIAL EXAMINER**

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees and prospective employees that:

WE WILL NOT require that ROBERT ELEY, or any other employees who work for us applying insulating material, be members of or have referrals from LOCAL 47, INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS, AFL, as a condition of employment. We will not give effect to any agreement or engage in any employment practice which makes any such requirement, except as authorized by Section 8 (a) (3) of the National Labor Relations Act, as amended.

WE WILL NOT interfere with, restrain, or coerce our employees or applicants for employment in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

WE WILL offer to ROBERT ELEY immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed.

WE WILL make whole ROBERT ELEY for any loss

of pay he may have suffered because of the discrimination against him.

ALEXANDER-STAFFORD CORPORATION
(Employer)

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

NOTICE TO ALL EMPLOYEES

THE RECOMMENDATIONS OF A TRIAL EXAMINER

WE WILL NOT enforce, give any effect to, or renew any agreement or employment practice with LOCAL 47, INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS, AFL, which requires that employees who apply insulating material for any of our member-companies, be members of or have referrals from, LOCAL 47, as a condition of employment, except as authorized by Section 8 (a) (3) of the National Labor Relations Act, as amended.

WE WILL NOT interfere with, restrain, or coerce the employees of or applicants for employment with any of our member-companies in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

MASTER INSULATORS ASSOCIATION

(Employer Association)

Dated By

(Representative)	(Title)
Mr. J. Edgar Hoover	Director
Mr. E. A. Tamm	Chief Justice
Mr. Clegg	Assistant Director
Mr. Glavin	Assistant Director
Mr. Ladd	Assistant Director
Mr. Nichols	Assistant Director
Mr. Rosen	Assistant Director
Mr. Tracy	Assistant Director
Mr. Carson	Assistant Director
Mr. Egan	Assistant Director
Mr. Gurnea	Assistant Director
Mr. Hendon	Assistant Director
Mr. Mumford	Assistant Director
Mr. Quinn	Assistant Director
Mr. Nease	Assistant Director
Mr. Pennington	Assistant Director
Mr. Starnes	Assistant Director
Mr. Tamm	Assistant Director
Mr. Winterrowd	Assistant Director
Mr. Egan	Assistant Director
Mr. Gurnea	Assistant Director
Mr. Hendon	Assistant Director
Mr. Mumford	Assistant Director
Mr. Quinn	Assistant Director
Mr. Nease	Assistant Director
Mr. Pennington	Assistant Director
Mr. Starnes	Assistant Director
Mr. Tamm	Assistant Director
Mr. Winterrowd	Assistant Director

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

APPENDIX C

NOTICE

TO ALL MEMBERS OF LOCAL 47,
INTERNATIONAL ASSOCIATION
OF HEAT & FROST INSULATORS
& ASBESTOS WORKERS, AFL,
AND TO ALL EMPLOYEES WHO
APPLY INSULATING MATERIAL

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

WE WILL NOT enforce, give effect to, maintain, or renew, any agreement, understanding, or practice with MASTER INSULATORS ASSOCIATION or any of its members including ALEXANDER-STAFFORD CORPORATION, under which employment of employees who apply insulating material is conditioned upon being members of our organization or having referrals from it and under which we give preference to our own members.

WE WILL NOT cause or attempt to cause ALEXANDER-STAFFORD CORPORATION or any other member of MASTER INSULATORS ASSOCIATION, their officers, agents, successors, or assigns, to discriminate against employees or applicants for employment because they are not members of or have not received a referral slip from the business agent of our organization, or in any other manner to discriminate

against them in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any other manner restrain or coerce employees of, or applicants for employment with, ALEXANDER-STAFFORD CORPORATION or any other member of MASTER INSULATORS ASSOCIATION, their successors, or assigns, in the exercise of the rights of employees guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act.

WE HAVE NOTIFIED ALEXANDER-STAFFORD CORPORATION that we have withdrawn all objections to its employment of ROBERT ELEY in the position he occupied prior to the discrimination against him, without regard to his membership or nonmembership in, or his having or not having a referral from, our organization, and without prejudice to his seniority or other rights and privileges.

WE WILL MAKE whole ROBERT ELEY for any loss of pay he may have suffered because of the discrimination against him.

LOCAL 47, INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS, AFL
(Union)

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

Grand Rapids, Mich.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ALEXANDER-STAFFORD CORPORATION

and

ROBERT ELEY, AN INDIVIDUAL

and

THE MASTER INSULATORS ASSOCIATION¹

Party to the Contract

and

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS &
ASBESTOS WORKERS, LOCAL 47,
AFL-CIO AND INTERNATIONAL
ASSOCIATION OF HEAT & FROST
INSULATORS & ASBESTOS WORKERS,
AFL-CIO²

Parties to the Contract

THE MASTER INSULATORS ASSOCIATION

and

ROBERT ELEY, AN INDIVIDUAL

and

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS &

Case No. 7-CA-1197

Case No. 7-CA-1198

¹ This is the correct name of the Association as it appears in the Association's Articles of Incorporation.

² The AFL and CIO having merged subsequent to the hearing in this proceeding, we are amending the identification of the Union accordingly.

ASBESTOS WORKERS, LOCAL 47,
AFL-CIO AND INTERNATIONAL
ASSOCIATION OF HEAT & FROST IN-
SULATORS & ASBESTOS WORKER,
AFL-CIO

Parties to the Contract
and

ALEXANDER-STAFFORD CORPORATION
Party to the Contract

INTERNATIONAL ASSOCIATION OF
HEAT & FROST INSULATORS &
ASBESTOS WORKERS, LOCAL 47,
AFL-CIO AND INTERNATIONAL
ASSOCIATION OF HEAT & FROST IN-
SULATORS & ASBESTOS WORKERS,
AFL-CIO

and

ROBERT ELEY, AN INDIVIDUAL

and

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THE MASTER INSULATORS ASSOCIA-
TION

Party to the Contract
and

ALEXANDER-STAFFORD CORPORATION
Party to the Contract

Case No. 7-CB-237

DECISION AND ORDER

On December 9, 1955, Trial Examiner Alba B. Martin issued his Intermediate Report in the above-entitled proceeding, finding that Respondents Alexander Stafford Corporation and The Master Insulators Association, herein referred to as Alexander-Stafford and Association, respec-

tively, had engaged in and were engaging in unfair labor practices within the meaning of Section 8 (a) (1) and (3) of the Act, and that Respondent International Association of Heat & Frost Insulators & Asbestos Workers, Local 47, AFL-CIO, hereinafter referred to as Local 47, had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (b) (1) (A) and (2) of the Act, and recommending that said Respondents cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that Respondent International Association of Heat & Frost Insulators & Asbestos Workers, AFL-CIO, hereinafter referred to as International, had not engaged in unfair labor practices within the meaning of the Act and recommended that the complaint against it be dismissed. Thereafter Respondents Alexander-Stafford and Association filed exceptions and supporting briefs to certain portions of the Trial Examiner's Recommended Order; the General Counsel filed exceptions to the Trial Examiner's Intermediate Report, and Respondent International filed a brief in support of the Trial Examiner's Intermediate Report.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the excep-

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tions and the briefs, and the entire record in the case, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner in so far as they are consistent with this decision and order.

Contrary to the Trial Examiner, we find that the International is jointly responsible with Local 47, for the *negotiation, interpretation, administration and enforcement* of the unlawful provisions of the contracts, *including their enforcement* against Robert Eley.

We are convinced, upon examination of the provisions of the International's Constitution and By-Laws, and the International Joint Trade Agreement, that in the performance of its collective bargaining functions, Local 47 is *not a free agent* with complete autonomy to conclude negotiations independently of the International's control. As a "*subordinate branch*" of the International, Local 47 is *required to "work under"* the International Joint Trade Agreement, as adopted by the International in Convention assembled, and accordingly, in its negotiations with the Association, it was compelled to gain the latter's acceptance of the International Joint Trade Agreement as the collective bargaining agreement governing their relationship. That agreement expressly states that its provisions are "not subject to change by a Local Union" and permits the negotiation of additional provisions only if they do not "*conflict with its letter or spirit.*" It further states that it has been approved by the International as to form and substance and certifies that it is not in violation of the International Constitution and By-Laws. Moreover, analysis of the substantive terms of the International Joint Trade Agreement, reveals that Local 47's bargaining authority was restricted largely to negotiating over wage rates, expense allowances, contributions to the welfare fund, and provisions relating to the effective term of the contracts. With respect to other matters, including those governed by the unlawful clauses,³ Local 47 was required to accept the

³ In absolving the International of responsibility for the unfair labor practices stemming from the existence of unlawful clauses in the 1953, 1954, and 1955 contracts, the Trial Examiner relied, in part on his conclusion that "the clauses found above to be unlawful on their face, because they discriminated in favor of Local 47 members over nonmembers in conditions of employment, were contained in the supplemental agreements not supplied by the International and for which the International Union could not in any case be held responsible." Article IX, however, does appear in the International Joint Trade Agreement. Moreover, in each of the contracts in issue, Article IX contains a typewritten notation referring to the Supplemental Agreement, which can only be a reference to paragraphs 1, 2, 3, 4 and 6, which are elaborations on the provisions of Article IX and which, in accordance with the provisions of the International Joint Trade Agreement are in accord with

provisions of the International Joint Trade Agreements.

Under all the circumstances, we find that the contracts involved herein were the product of the International's insistence that Local 47 "work under" the International Joint Trade Agreement, the provisions of which were not subject to change, and were not changed by Local 47. *In negotiating the contracts in accordance with the restrictions and conditions imposed by the International*, it is clear that Local 47 was acting as the *agent* of the International, and that its unlawful conduct in this regard is imputable to the International, and we so find.⁴

Moreover, we find, that by adopting the International Joint Trade Agreement in convention, and by requiring Local 47 to "*work under*" it, thus compelling Local 47 to gain the Association's acceptance of it in collective bargaining negotiations, the International participated in the negotiation of the unlawful contracts, notwithstanding the fact that its representatives were not physically present at the negotiation meetings.⁵ In insisting that Local 47 negotiate on the basis of such agreements, the International *necessarily contemplated* that Local 47 would interpret and administer the terms thereof in accordance with the

intent of the International when it adopted them. The International therefore stands at least as a *co-sponsor* of

the spirit of Article IX, in that the additional expenses provided, are provided only for members of Local 47. Accordingly, it makes no difference insofar as the responsibility of the International is concerned, that they appear in the supplemental agreement. Finally, the Trial Examiner, did not take into consideration the fact that Article VII, which he found to be unlawful in that it provided for a preferential hiring arrangement which required membership in or referral from Local 47 as a condition of employment with Alexander-Stafford and other members of the Association, appears in the International Joint Trade Agreement.

⁴ See *Bay Counties District Council of Carpenters and Joiners of America, AFL-CIO*, 117 NLRB No. 140.

⁵ See *Chicago Typographical Union No. 16*, 86 NLRB 1041, *enfd* 193 F. 2d. 782, (C. A. 7) cert. den. 344 U.S. 816.

the provisions of the contract and the PRACTICES OCCURRING UNDER THEM. Such co-sponsorship carries with it the responsibility of a *joint participant* in a *common enterprise* for the acts performed in furtherance of the enterprise by the other participant of the enterprises. Accordingly, although the evidence does not show that the International was actively associated with the events leading to the discrimination against Robert Eley, caused by Local 47, or with Local 47's interpretation, administration and enforcement of the contracts generally, we find that because of its participation in a *common enterprise with Local 47*, the latter's conduct becomes the liability of the International.* As the International is therefore responsible for Local 47's negotiation of the 1954 and 1955 contracts, and for the interpretation, administration and enforcement of the 1953, 1954 and 1955 contracts generally, and for the discrimination against Robert Eley, caused by Local 47, we find that by these acts, the International violated Sections 8 (b) (2) and (1) (A) of the Act.

The Remedy

Having found that the Respondents engaged in the unfair labor practices set forth above, we shall order that they cease and desist therefrom and that they take certain affirmative action designed to effectuate the policies of the Act.

The Trial Examiner, though finding that Article Nine and paragraphs 1, 2, 3, 4 and 6 of the contracts in issue were unlawful on their face and should be corrected, did not include in his recommended order a provision designed to accomplish that end. *We shall order the Respondents to cease and desist from continuing such provisions in their existing and future contracts.*

Respondents Alexander-Stafford and Association except

* *George D. Auchter Company*, 102 NLRB 881, 883; *E. F. Shuck Construction*, 114 NLRB 727, 729.

to the cease and desist order recommended against them as being too broad in scope. We find no merit in their exceptions, and accordingly, as the Trial Examiner's recom-

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mendations in this regard accord with our usual policies in cases such as this,⁷ we shall issue a broad cease and desist order against all Respondents.

Respondent Alexander-Stafford also excepts to the provision in the Trial Examiner's recommended order that it publish a notice in all newspapers in the communities in Western Michigan where it has employed mechanics or improvers during the last 3 years. As acknowledged by Respondent Alexander-Stafford, publication is a reasonable extension of the posting requirements in order to insure adequate notice.⁸ As Respondents operations are carried on at different job sites for relatively short lengths of time at an any particular job site, there is no assurance that posting of notices at current job sites, as suggested by Respondent, will cover the entire area in which Respondent operates. The requirement of publication in all of the cities of Western Michigan in which Respondent Alexander-Stafford has employed mechanics or improvers during the last 3 years should insure notice to all interested persons in the area of Respondent's operations, that it has discontinued its unlawful hiring practices.⁹

As we have found, that both Respondent Local 47 and Respondent International, are responsible for the unfair labor practices found, we shall order both to cease and desist therefrom and to take the affirmative action directed in our Order below.

⁷ See for example *North East Texas Motor Lines, Inc.*, 109 NLRB 1148.

⁸ *Frank W. Hake, James D. Hake, Glenn F. Hake t/a Frank W. Hake*, 112 NLRB 1097; *J. J. White, Inc.*, 111 NLRB 1126.

⁹ In so finding we reject Respondent's interpretation of the term "has employed" as meaning has hired. We use it in the sense of "has made use" of services of mechanics or improvers.

Order

Upon the entire record in the case and pursuant to Section (10) (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

1. The Respondent Alexander-Stafford Corporation, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall:

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(a) Cease and desist from:

(1) Entering into, enforcing, or otherwise continuing in effect agreements which provide for the payment of benefits to members of Local 47, without also providing for payment of such benefits to non-members.

(2) Entering into, enforcing, or giving effect to any agreement or practice of requiring membership in or referral from Respondent Local 47 or any other labor organization as a condition of employment with it except as authorized by Section 8 (a) (3) of the Act:

(3) Encouraging membership in Respondent Local 47, or any other labor organization by discriminating in regard to any term or condition of employment of any employee or prospective employee because of membership in or failure to obtain membership in Respondent Local 47;

(4) In any other manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) Offer to Robert Eley immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed;¹⁰

(2) Make whole Robert Eley for any loss of pay he may have suffered by reason of the discrimination against him in manner set forth in the section of the Intermediate Re-

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port herein entitled "The Remedy";

(3) Cause, at its expense, the notice hereto attached as Appendix A¹¹ to be printed in newspapers having general circulation in each of the cities and towns in Western Michigan in which it has employed mechanics or improvers during the last 3 years;

(4) Post at its office and warehouse in Grand Rapids, Michigan, copies of the notice attached hereto marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by Respondent Company's representative, be posted by said Company immediately upon the receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to mechanics and improvers are customarily posted. Reasonable steps shall be taken by the Respondent Company to insure that such notices are not altered, defaced, or covered by any other material;

¹⁰ Neither the correspondence leading to Eley's present term of employment beginning July 5, 1955, nor the record, established that Eley was then reinstated to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed.

¹¹ In the event this Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER", the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER."

(5) Notify the Regional Director for the Seventh Region in writing within ten (10) days from the date of this Order, what steps Respondent Company has taken to comply herewith;

2. The Respondent The Master Insulators Association, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Entering into, enforcing, or otherwise continuing in effect, agreements which provide for payment of benefits to members of Local 47, without also providing for payment of such benefits to non-members.

(2) Entering into, enforcing, or giving effect to any agreement or practice between itself or Alexander-Stafford Corporation or Kalamazoo Asbestos Company or any other of its members on the one hand and Local 47 or International Association of Heat & Frost Insulators & Asbestos Workers, AFL-CIO, on the other hand, which conditions employment upon membership in or referral from said

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Local 47 or any other labor organization, except under a nondiscriminatory arrangement permitted by Section 8 (a) (3) of the Act;

(3) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in collective bargaining or other mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

(b) Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(1) After receiving from the Regional Director for the Seventh Region copies of the notice attached hereto marked Appendix B,¹² cause, at the expense of The Master Insulators Association, said notice, Appendix B, to be printed in newspapers of general circulation in Grand Rapids, Kalamazoo, Lansing, Flint, Saginaw, Jackson, and Bay City, Michigan;

(2) Notify the Regional Director for the Seventh Region in writing within ten (10) days from the date of this Order, what steps Respondent The Master Insulators Association has taken to comply herewith.

3. The Respondents Local 47 and the Respondent International, their officers, representatives, agents, successors, and assigns, shall;

(a) Cease and desist from:

(1) Entering into, enforcing, or otherwise continuing in effect, agreements which provide for the payment of benefits to members of Local 47, without also providing for payment of such benefits to non-members.

(2) Entering into, enforcing, or giving effect to any

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agreement or practice with Alexander-Stafford Corporation, Kalamazoo Asbestos Company, or any other member of The Master Insulators Association, or the Association itself, which requires membership in or referral from said Local 47 or any other labor organization as a condition of employment with any said companies, except as authorized by Section 8 (a) (3) of the Act:

(3) Causing or attempting to cause Alexander-Stafford

¹² In the event this Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER", the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER."

Corporation to discriminate against Robert Eley or any other employee or applicant for employment, because they are not members of said Local 47, or in any manner to discriminate against them in violation of Section 8 (a) (3) of the Act;

(4) In any other manner restraining or coercing employees of, or applicants for, employment with Alexander-Stafford Corporation in the exercise of their rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Notify Alexander-Stafford Corporation in writing that they withdraw all objections to the employment by Alexander-Stafford Corporation of persons who are not members of or are not referred from said Local 47 and that it requests said Company to employ persons as asbestors workers and pipe covers without regard to their membership or nonmembership in, or to their having or not having a referral from, Local 47 or any other labor organization;

(2) Notify Alexander-Stafford Corporation in writing and send a copy to Robert Eley at his home in Grandville, Michigan, that they withdraw all objections to the employment of Robert Eley in the position he occupied prior to the discrimination against him, without regard to his membership or nonmembership in, or his having or not having a referral from Respondent Local 47 or any other labor organization, and without prejudice to his seniority or other rights and privileges;

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(3) Make whole Robert Eley for any loss of pay he may have suffered by reason of the discrimination against him

in the manner set forth in the section herein entitled "The Remedy";

(4) Cause, at their expense, the notices hereto attached as Appendix C¹³ to be printed in newspapers of general circulation in Grand Rapids, Kalamazoo, Lansing, Flint, Jackson, Saginaw, and Bay City, Michigan;

(5) Post at the Labor Temple in Lansing, Michigan, copies of the notices attached hereto marked Appendix C. Copies of said notices, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by representatives of Respondent Local 47 and representatives of Respondent International, be posted by said Respondents immediately upon the receipt thereof, and maintained by them for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to mechanics and improvers are customarily posted. Reasonable steps shall be taken by said Respondents to insure that such notices are not altered, defaced, or covered by any other material;

(6) Notify the Regional Director for the Seventh Region in writing within ten (10) days from the date of this Order, what steps Respondent Local 47 and Respondent International have taken to comply herewith.

Dated, Washington, D. C., June 7, 1957.

BOYD LEEDOM, *Chairman*

ABE MURDOCK, *Member*

PHILIP RAY RODGERS, *Member*

STEPHEN S. BEAN, *Member*

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹³ Appendix C sets out the notice to be subscribed and posted by Local 47. That to be posted by Respondent International shall be identical in form, except that where the name of the Union appears above the signature line, the words "Local 47" shall be deleted.

In the event that this Order is enforced by a decree of a United States Court of Appeals there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

APPENDIX A**NOTICE TO ALL EMPLOYEES
PURSUANT TO
A DECISION AND ORDER**

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees and prospective employees that:

WE WILL NOT enter into, enforce, or otherwise continue in effect, any agreement which provides for the payment of benefits to members of LOCAL 47, INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS, AFL-CIO, without also providing for payment of such benefits to non-members.

WE WILL NOT require that ROBERT ELEY, or any other employees who work for us applying insulating material, be members of or have referrals from LOCAL 47, INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS, AFL-CIO, as a condition of employment. We will not give effect to any agreement or engage in any employment practice which makes any such requirement, except as authorized by Section 8 (a) (3) of the National Labor Relations Act, as amended.

WE WILL NOT interfere with, restrain, or coerce our employees or applicants for employment in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act, as amended.

WE WILL offer to ROBERT ELEY immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed.

WE WILL make whole Robert Eley for any loss of pay he may have suffered because of the discrimination against him.

ALEXANDER-STAFFORD CORPORATION
(Employer)

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced or covered by any other material.

APPENDIX B**NOTICE TO ALL EMPLOYEES
PURSUANT TO
A DECISION AND ORDER**

of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees and prospective employees that:

WE WILL NOT enter into, enforce or otherwise continue in effect, any agreement which provides for the payment of benefits to members of LOCAL 47, INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS, AFL-CIO, without also providing for payment of such benefits to non-members.

WE WILL NOT enforce, give any effect to, or renew any agreement or employment practice with LOCAL 47, INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS, AFL-CIO, which requires that employees who apply insulating material for any of our member-companies, be members of or have referrals from Local 47, as a condition of employment, except as authorized by Section 8 (a) (3) of the National Labor Relations Act, as amended.

WE WILL NOT interfere with, restrain, or coerce the employees of or applicants for employment with any of our member-companies in the exercise of the rights guaranteed by Section 7 of the Act, except to the extent such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act, as amended.

MASTER INSULATORS ASSOCIATION
(Employer Association)

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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APPENDIX C

NOTICE

TO ALL MEMBERS OF LOCAL 47 INTERNATIONAL
ASSOCIATION OF HEAT & FROST INSULATORS &
ASBESTOS WORKERS, AFL-CIO, AND TO ALL
EMPLOYEES WHO APPLY INSULATING MATERIAL

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify you that:

WE WILL NOT enter into, enforce, or otherwise continue in effect, any agreement which provides for the payment of benefits to members of LOCAL 47, INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS, AFL-CIO, without also *providing for the payment of such benefits to non-members.*

WE WILL NOT enforce, give effect to, maintain, or renew any agreement, understanding, or practice with MASTER INSULATORS ASSOCIATION or any of its members including ALEXANDER-STAFFORD CORPORATION, under which employment of employees who apply insulating material is conditioned

upon being members of our organizations or having referrals from them and under which we give preference to our own members.

WE WILL NOT cause or attempt to cause ALEXANDER-STAFFORD CORPORATION or any other member of MASTER INSULATORS ASSOCIATION, their officers, agents, successors, or assigns, to discriminate against employees or applicants for employment because they are not members of or have not received a referral slip from the business agent of our organization, or in any other manner to discriminate against them in violation of Section 8 (a) (3) of the Act, as amended.

WE WILL NOT in any other manner restrain or coerce employees of, or applicants for employment with, ALEXANDER-STAFFORD CORPORATION or any other member of MASTER INSULATORS ASSOCIATION, their successors, or assigns, in the exercise of the rights of employees guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the Act, as amended.

WE HAVE NOTIFIED ALEXANDER-STAFFORD CORPORATION that we have withdrawn all objections to its employment of ROBERT ELEY in the position he occupied prior to the discrimination against him, without regard to his membership or nonmembership in, or his having or not having a referral from, our organization, and without prejudice to his seniority or other rights and privileges.

WE WILL MAKE whole ROBERT ELEY for any

loss of pay he may have suffered because of the discrimination against him.

LOCAL 47, INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS & ASBESTOS WORKERS, AFL-CIO

(Union)

Dated By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS AND ASBESTOS WORKERS, AFL-CIO, ET AL., Petitioners,	}	No. 14,015
v.		
NATIONAL LABOR RELATIONS BOARD, Respondent.	}	
NATIONAL LABOR RELATIONS BOARD, Petitioner,	}	
v.		
ALEXANDER-STAFFORD CORPORATION, AND THE MASTER INSULATORS ASSO- CIATION, Respondents.	}	No. 14,093

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38 (k) of the Rules of this Court, International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO, and International Association of Heat and Frost Insulators and Asbestos Workers, Local 47, AFL-CIO, petitioners in No. 14,015, and National Labor Relations Board, respondent in No. 14,015 and petitioner in No. 14,093, subject to the approval of the Court, do hereby stipulate and agree as set forth below.

Alexander-Stafford Corporation and the Master Insulators Association, respondents in No. 14,093, by letter dated September 27, 1957, have informed the Court that it is not their intention to have any appearance filed in their behalf at this time, and that they will not be represented at the prehearing conference and will not be necessary parties to any prehearing conference stipulation.

I. CONSOLIDATION OF CASES

The above cases shall be consolidated for all purposes.

II. BRIEFS AND JOINT APPENDIX TO BRIEFS

A. For the purpose of facilitating the work of the Court and the parties, it is agreed that the record shall be printed in a Joint Appendix and that the parties will exchange typewritten drafts of briefs before preparing their designations of the portions of the record to be printed. The procedure and schedule shall be as follows:

1. Petitioners shall serve on the Board two typewritten copies of their brief in final form on or before November 15, 1957.

2. The Board shall serve on petitioners two typewritten copies of its brief in final form on or before December 11, 1957.

3. Petitioners shall serve on the Board two typewritten copies of their reply brief, if any, on or before January 7, 1958.

4. The parties shall submit to each other, on or before December 20, 1957, designations of the portions of the certified record which each desires to have printed in the Joint Appendix. Petitioners in No. 14,015 will include the Trial Examiner's Intermediate Report and the Board's Decision and Order in their designation, this stipulation, and the Court's order entered thereupon.

5. The final printed briefs of all the parties and the Joint Appendix shall be filed in Court and served on the parties on or before January 14, 1958.

B. Each party shall bear the expense of printing in the Joint Appendix the portions of the record designated by him.

C. In their respective briefs, the parties shall make references to the record by citation to the pages of the certified record as indicated in the Index to Certified Record. All

such pages to which reference will be made will appear in bold-face type on separate lines in the pages of the Joint Appendix.

D. It is further agreed that any party and the Court, at and following the hearing in the case, may refer to any portion of the original transcript of record herein which has not been printed, to the same extent and effect as if such portions of the transcript had been printed or otherwise reproduced, it being understood that any portions of the record thus referred to will be printed in a supplemental joint appendix if the Court directs the same to be printed.

III. STATEMENT OF QUESTIONS PRESENTED

A. Whether the Board properly found that Local 47, and also the Company and the Association, interpreted, administered, and enforced the 1953 contract, and entered into, interpreted, administered, and enforced the 1954 and 1955 contracts, as union preference contracts, and that thereby Local 47 violated Section 8 (b) (2) and (1) (A) and the Company and the Association violated Section 8 (a) (3) and (1) of the Act.

B. Whether the Board properly found that Article IX of the contracts and paragraphs 1, 2, 3, 4, and 6 of the Supplemental Agreements are unlawful on their face.

C. Whether the Board properly found that Local 47 interpreted and enforced the 1953 contract as a preferential contract, which caused the Company to discriminate against Eley in violation of Section 8 (a) (3) and (1) of the Act, and thereby violated Section 8 (b) (2) and (1) (a) of the Act.

D. Whether the Board properly found that the responsibility for the unfair labor practices found by the Board to

have been committed by Local 47 is attributable also to the International.

CARLTON R. SICKLES
240 Woodward Building
Washington 5, D. C.
Attorney for Petitioners in Case No.
14,015

STEPHEN LEONARD
Associate General Counsel
National Labor Relations Board
330 C Street, S.W.
Washington 25, D.C.
Attorney for Respondent in Case No.
14,015, and for Petitioner in Case No.
14,093.

Dated at Washington, D.C.
this 1st day of October, 1957.

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

April Term, 1957.

No. 14,015

INTERNATIONAL ASSOCIATION OF HEAT & FROST INSULATORS
AND ASBESTOS WORKERS, AFL-CIO, et al., *Petitioners*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

No. 14,093

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

ALEXANDER-STAFFORD CORPORATION, AND THE MASTER IN-
SULATORS ASSOCIATION, *Respondents*.

Before: Bastian, Circuit Judge, in Chambers.

ORDER

Upon consideration of the prehearing conference stipulation signed by counsel for petitioner in case No. 14,015 and by counsel for the National Labor Relations Board, and counsel for respondents in case No. 14,093 having notified this Court by letter that it was not their intention to enter an appearance in that case at this time and that they will not be present at a prehearing conference, it is

ORDERED that the aforesaid prehearing stipulation be approved and that the Clerk be, and he is hereby, directed to file said stipulation forthwith.

It is FURTHER ORDERED that the prehearing stipulation be printed in the joint appendix and shall control further proceedings in these cases unless modified by further order of this Court.

Dated: October 2, 1957.

BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14015

INTERNATIONAL ASSOCIATION OF HEAT AND FROST
INSULATORS AND ASBESTOS WORKERS, AFL-CIO,
AND INTERNATIONAL ASSOCIATION OF HEAT AND
FROST INSULATORS AND ASBESTOS WORKERS, LOCAL
47, AFL-CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 14093

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ALEXANDER-STAFFORD CORPORATION, AND POLE MASTER
INSULATORS ASSOCIATION, RESPONDENTS

ON PETITION TO REVIEW AND ON PETITION FOR ENFORCEMENT
OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

JEROME D. FENTON,

General Counsel

THOMAS J. McDERMOTT,

Associate General Counsel

MARCEL MALLET-PREVOST,

Assistant General Counsel

OWSLEY VOSE,

MARGARET M. FARMER,

Attorneys

*National Labor Relations Board
330 C Street S.W., Washington 25, D.C.*

STATEMENT OF QUESTIONS PRESENTED

The questions presented were formulated in the prehearing conference stipulation, and are correctly stated in the brief for petitioners in No. 14015.

(1)

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 14015 and 14093

INTERNATIONAL ASSOCIATION OF HEAT AND FROST
INSULATORS AND ASBESTOS WORKERS, AFL-CIO,
AND INTERNATIONAL ASSOCIATION OF HEAT AND
FROST INSULATORS AND ASBESTOS WORKERS, LOCAL
47, AFL-CIO, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

ALEXANDER-STAFFORD CORPORATION, AND THE MASTER
INSULATORS ASSOCIATION, RESPONDENTS

*ON PETITION TO REVIEW AND ON PETITION FOR ENFORCEMENT
OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD*

COUNTERSTATEMENT OF THE CASE

A. Introduction

This case involves the validity of certain contract clauses which the Board found were either illegal on their face because of the preference therein provided for union members, or were unlawful because they were interpreted and enforced as giving union members preferential rights. The contracts were executed in 1953, 1954, and 1955, by and between Inter-

national Association of Heat and Frost Insulators and Asbestos Workers, Local 47, AFL-CIO (herein called Local 47), and The Master Insulators Association (herein called the Association), a group of employers engaged in insulating work, mainly in Western Michigan. Alexander-Stafford Corporation, a respondent in No. 14093 along with the Association, is a member of the Association and is covered by the collective bargaining contracts entered into by the Association. The Board found that Article IX of the contracts, and the supplements thereto were illegal on their face in that they provided payments and benefits for union members and made no corresponding provision for nonmembers (R. 1060, 1106). The Board further found that Articles VII and XI of the contracts, although not unlawful on their face, had been interpreted and administered as union preference contracts. Accordingly, the Board concluded that by so interpreting and enforcing Articles VII and XI the Company had violated Section 8 (a) (3) and (1) of the Act, and Local 47 had violated Section 8 (b) (2) and (1) (A) (R. 1073).

The case also involves the validity of the discharge of Robert Eley by Alexander-Stafford Corporation (herein called the Company) following an inquiry by Local 47 as to whether the Company could use the services of any of a group of union members who had recently been thrown out of work. The Board found that Eley was discharged pursuant to the parties' illegal construction of Articles VII and XI of the contract, that the Company's conduct therefore vio-

lated Section 8 (a) (3) and (1) of the Act, and that Local 47's conduct in causing the discharge violated Section 8 (b) (2) and (1) (A) (R. 1073-1074).

The Board further found, overruling the Trial Examiner in this regard, that the International was responsible for the unfair labor practices in which Local 47 engaged (R. 1105-1106).

The Company and the Association are not contesting the validity of the order in this Court, having informed the Court that they do not intend to file any appearance herein.

B. Background

From at least 1939 until the amendment of the Act in 1947, Local 47 and the employers within its jurisdictional area operated under contracts based upon Joint Trade Agreement forms drafted and supplied by the International (R. 1057; 97-99, 168-171, 289). These were closed-shop contracts, providing in Article XI that all insulating work within the jurisdiction of Local 47 should be performed by members of that Local (R. 1057; 1014, 1019, 1024, 1028, 1033), and in Article VII that nonunion men might be employed in emergencies, if the Union could not supply applicants, and would be permitted to work under union permits "until replaced by members of said Union (R. 1061; 168-169, 1013, 1017, 1021, 1026, 1031). Article IX provided for the payment of specified amounts for board and transportation to *members of Local 47* when employed on out-of-town jobs (R. 1013, 1018, 1023, 1027, 1032). During this period nonunion employees were required to secure permits from the Union in order to work (R. 98).

In 1943 or 1944, Local 47 adopted a bylaw which provided that (R. 1063; 993, 261):

Any member of Local No. 47 found working with any man not holding a Permit or Union Card shall be called before the Executive Board and fined accordingly.

When closed-shop contracts became unlawful with the passage of the Act as amended in 1947, Local 47 and the area employers temporarily discontinued the use of the Joint Trade Agreement forms and operated from 1947 until 1953 under memorandum agreements dealing only with wages and transportation (R. 1057; 170, L. U. Exhs. 6-10). However, the restrictive bylaw of Local 47 prohibiting its members from working with nonunion or nonpermit men remained unchanged and the preferential employment practices which had grown up under the former closed-shop contracts continued. As stated more fully at pp. 7-8, *infra*, John Bond president of the Kalamazoo Asbestos Company, one of the members of the Association, testified that the preferential hiring practices in effect in his Company had been the same for 20 years despite contract changes (R. 1061; 97-99).

As to the Company's practice in the 1947-1952 period, Eley, whose discharge is also involved in this case (*infra*, pp. 12-16), testified that in 1950 when he first applied to respondent Company for a job, respondent's manager Ralph Sasser said to him "As long as you have referral * * * you can work * * * [but] * * * even though you have a referral * * * and a card man is available out of work, that card man will have the job in preference to referral men"

(R. 1057; 350-351). Eley further testified that once during his first job with the Company in 1950, when some new men were brought on the job, Edward Kraenberg, job foreman for the Company (R. 1056; 627, 655-656) and a member of the Union (R. 627), "wanted to make sure that we had our referrals up to date, because he said, 'if you are not up to date, the union members of Local 47 aren't allowed to work with nonunion members or members that don't have referral' " (R. 1057; 359-361).

At its convention in September 1952, the International adopted a new constitution and bylaws and drafted and adopted a new Joint Trade Agreement form for the use of its Locals (R. 910-955, 956-964).¹ This constitution, as shown below, vested an extensive degree of control in the International over the affairs of Local Unions which it defined as "subordinate branches," and required them to "work under" trade agreements "as adopted by the International Association in Convention assembled." The new Joint Trade Agreement, which the Constitution required all Locals to use for collective bargaining purposes, provided that the Local Unions were to be the parties to the contracts, and that the standard form could be supplemented only to the extent that the additions were in harmony with "the spirit and the letter" of the standard contract. See pp. 21-29, *infra*.

The standard Joint Trade Agreement contains the contract clauses giving rise to the instant case.

¹ The former constitution was not introduced in evidence and it does not appear to what extent it was revised.

Article XI thereof, which in the old Joint Trade Agreement had provided for the exclusive employment of members of the Local, was changed to provide, in Article XI (R. 1059-1060; 961-962):

The party of the first part agrees to employ the membership of Local No. — in the application of pipe and boiler covering, insulation of hot surfaces, ducts, flues, etc.²

Article VII, providing in the old agreement for the permissible employment of nonmembers in emergencies until their places could be filled by union members, was changed to provide (R. 1059; 960):

Local No. — will direct nonmembers to the employers in the numbers agreed upon and shall issue them Referral Cards for the purposes of identification and classification.

Article IX continued to provide for the payment of board and transportation in out-of-town jobs for *members of the local* and did not provide for such payments to nonmembers (R. 1059; 961).

At some time in 1952, the employers with whom Local 47 had been contracting, formed the Association for the negotiation of future agreements with Local 47 (R. 1058; 52, 44).

²The Board noted (R. 1061) that this form of Article XI had been considered by it in *Mundet Cork Corporation*, 96 NLRB 1142, a case decided in 1951 involving the use of the pre-1952 Joint Trade Agreement. The Board found (at pp. 1144-1145) that the Article was not discriminatory on its face but must be interpreted in the light of the discriminatory Article VII.

C. The unfair labor practice

1. The contract provisions

The contract negotiated by the newly formed Association and Local 47 in July 1953, consisted of the printed Joint Trade Agreement form adopted by the International in its 1952 convention with the blanks appropriately filled in, plus a Supplemental Agreement implementing the provisions of Article IX with respect to the payment to members of the Local of specified sums for board and transportation in out-of-town jobs (R. 1058-1060; 869-875, 876-890). In addition to these out-of-town payment provisions which, as shown below, on their face favored union members, the contract contained the revised Articles XI and VII, quoted above, the meaning of which, the Board found, is ambiguous (R. 1061; *infra*, pp. 19-22).

2. The practices of the parties under the contracts

Despite the modification in the wording of Articles XI and VII of the new contracts, the parties continued the preferential employment practices already established. John Bond, president in 1953 of the newly formed Association, testified that although he was aware of the changes in the wording of Article VII of the 1953 Agreement, as compared with the wording of the 1943 Agreement, his company "operated the same under these agreements" as it had during the past 20 years (R. 1061; 97-99, 169). According to Bond, his company considered itself bound to call the business agent of Local 47 for asbestos

workers (R. 1061; 99). Local 47, Bond further testified, would send him union members if any were available and others only if they were not. And if the business agent could not supply any men his company would find the men and Local 47 would issue referrals (R. 1061; 97-99). Thus under his company's practice the Local continued to be the sole source of labor supply, and Local 47 gave preference to members, as Bond was aware.

a. The Company's practices under the contracts

In December 1953, Sasser, manager of respondent Company, approached Robert Eley on the job and told him that Local 47 was "putting their card men in" and that he would have to lay Eley off. Sasser added that "when things smooth out I'll give you a call and you can come back to work" (R. 1057-1058; 362-363, 411, 766). Eley, a member of another union, was working under a referral from Local 47 (R. 1057; 347-348, 355). In about a week's time Sasser called Eley back to work (R. 1058; 362-363, 411).

In May or June 1954, at a time when the Company was urgently in need of two workmen, Manager Sasser tried "desperately" to find Fisher, Local 47's business agent, in an effort to obtain them from Local 47. Unable to locate Fisher at this time, Sasser hired two carpenters from the general contractor on the job. However, he informed Fisher at the earliest opportunity and was furnished referrals for them (R. 1062; 520-521). Sasser testified that his practice was "to hire from the Union * * * because that is where * * * the available manpower is." In response to further questioning, he testified that he believed he

could hire a specific nonunion workman without first clearing through the Union's business agent "if the conditions were right." As an illustration of the "right conditions" he referred to the incident described above where he needed men urgently and could not locate the Union's business agent (R. 1062; 578-580).

There is further evidence that the Company regarded itself as bound by the contracts to fill all of its labor needs through Local 47. In June 1954 Manager Sasser drafted a letter to the secretary-treasurer of the International, the purpose of which was to attempt to persuade the International to do something about Local 47's restrictive membership practices which left the Company "continuously short of manpower" and "always wanting more qualified men" (R. 1062; 593-611, 1006-1008). In the letter, the Company recited that it already had on file with Local 47 an unfilled request for four men, and to buttress its argument that Local 47 should have more members available, the Company included listings of the names of union members and "permit" men in its employ from 1949 through 1953, inclusive, showing that the number of permit men almost equalled the number of members in 1953 (R. 1062; 1006-1008). No mention was made of any other classification of employees who were neither union members nor "permit" men. Nor is there any evidence in the record tending to show that any other classification existed.

Finally, the Company's layoff of Robert Eley in May 1954 to make room for "cardmen", discussed more fully at pp. 12-16, *infra*, demonstrates that the

Company regarded itself as bound by the contract to give preference in employment to union members.

b. Local 47's practices under the contract

Local 47 also adhered to the restrictive practices of pre-1947 years. Although the most recent agreements provided in Article XVII that the contract should be "rigidly observed until its expiration * * * during which time neither party to it shall continue in force or create any rule or bylaw conflicting with its provisions (R. 963)," no move was made by Local 47, so far as the record shows, to repeal the restrictive bylaw passed in 1943 or 1944 prohibiting union members from working with nonunion members unless they had a permit (R. 1064; 261). When asked whether this bylaw was still in effect, Union Business Agent Fisher made no denial, but testified merely that he knew of no instance of any member of Local 47 who "has been found * * * working with anyone without proper credentials" (R. 1064; 262).

Business Agent Fisher testified candidly concerning the Local's procedure in satisfying requests for asbestos workers. According to his testimony, when requested by an employer to supply men, he sent first the available union members, but after the supply of unemployed union men had been exhausted he would send nonmembers with referral cards (R. 1064; 294-295). Fisher would not, however, issue a referral card to a nonunion man unless there was at that time a job open on which he could place him (and of course not then unless the supply

of available union men had been exhausted), or unless the employer specifically requested him to issue a card to a man on the job (R. 1065; 293-298, 290-291).

Business Agent Fisher gave further testimony concerning Local 47's practice of issuing referral cards. Article VII of the contract, it will be recalled, provides that the Local "will direct nonmembers to the employers in the numbers agreed upon." When asked how the Local determined the number of referrals under Article VII of the contracts, Fisher replied, "I would say that the amount of work in the asbestos field at the time of the request would determine * * * the number of insulators requested [by] the employer. All work covers all construction, the amount of work, the amount of men" (R. 1065; 294-295). In other words, as the Trial Examiner concluded (R. 1065-1066), Local 47 supplies all of the asbestos workers needed on all construction projects within its jurisdiction and no nonunion men did such work except on a referral card from Local 47.

That Local 47 regarded the contracts as giving preferential hiring rights to union members is further seen in the comments of Business Agent Fisher to Eley, when the latter, after his layoff by the Company in May 1954, asked Fisher for a referral to enable him to go back to work for the Company. On this occasion Fisher replied that "they were not going to issue any more referrals to anybody, that they were going to handle the work themselves" (R. 1070; 369-370).

3. The discrimination against Robert Eley at the instigation of the Union

a. Eley's unsuccessful efforts to join Local 47

At the time of the events hereinafter described, Robert Eley was a member in good standing of Local 115 of the Operators, Plasterers, and Cement Finishers (R. 1066; 355-356), but had been employed as an asbestos worker in the insulation trade as a mechanic (i. e., a journeyman) for a number of years (R. 1066; 347). For almost four years he had worked for the Company on referral cards from Local 47 (R. 1066; 348).

On April 19, 1954, Eley, who had been seeking membership in Local 47 for a number of years, wrote Business Agent Fisher stating that he had worked at the insulating trade for 7½ years, would like to continue to do so as a member of Local 47, and asked for a membership application (R. 1066; 389, 472). After taking the steps recommended by Fisher, including appearing before the Executive Board of the Local in Lansing, but without success, Eley sought the aid of the International, explaining that he had been trying unsuccessfully to become a member of Local 47 for five years (R. 1066-1067; 389, 470-474, 997-1000). Nothing came of this effort either.

b. The Local's referral of Eley to the Central Paper job

On May 10, 1954, Fisher issued Eley a referral card to work for the Company at its Central Paper job in Muskegon, Michigan, specifically noting that the card expired in 30 days (R. 1067; 272, 274-276).³

³Local 47 had long had a rule that referral cards must be renewed every 30 days, and in February 1954, had passed a rule that such cards could be obtained only in Lansing, Michi-

c. Local 47 suggests to the Company that it find room for displaced members

Shortly before May 20, 1954, Fisher learned that a construction project in Montague, Michigan, would close down shortly and began asking employers for jobs for the men who would be laid off (R. 1067; 263, 266-267). The shutdown occurred on May 20, throwing more than 20 men out of work (R. 1067; 263, 696). Virtually all of these were members of Local 47 (R. 1067; 696-697). On that day, Fisher called the Company and asked President Stafford if he could find room for some of these men (R. 1067; 267-268). Stafford informed Manager Sasser of the request and instructed him to "take on what men he could" (R. 1067; 216-217, 226-228, 497). Sasser told Fisher in a telephone conversation that he was going to Muskegon and would let him know later if he could take on any men there (R. 1068; 270).

d. The Company lays off Eley

Manager Sasser went to the Central Paper project at Muskegon the same day. He approached Eley directly and informed him that the men at the Montague job were being fired, and then remarked that "It might be a good thing if you didn't show up on the job tomorrow. * * * You know we have an agreement with the Local to keep all our cardmen in work. * * * If they come down here on the job looking it over and saw a referral man working and them not, there would be some trouble" (R. 1068, 365-366). Kranenberg, the Company's job foreman (R. 1067; 276), a rule which had caused Eley considerable inconvenience as he lived near Grand Rapids and often worked on projects a long distance from Lansing (R. 1066; 364-365).

and also job steward for Local 47,⁴ was nearby and he came up during the conversation. Having overheard Sasser, Kranenberg added, "You might as well take [your] tools home because * * * you probably won't be coming back to this job * * * Bernie Wines lives here in Muskegon and if there is any work in Muskegon Bernie Wines (a member of Local 47) will get it * * * so, it would be a good idea if you didn't show up or come back" (R. 1068; 411-416). As Eley was packing his tools he said to Kranenberg that inasmuch as he was being laid off he might as well go fishing the next day. Kranenberg replied that that would be a good idea (R. 1068; 417-418, 367).

After Kranenberg had left, Sasser remarked to Eley that there was considerable work available and that it should not take more than a week or 10 days to place the men. Sasser then added that "until they have their men placed on jobs, I can't put you to work, I can't keep you working * * * we've got to play ball with the Union * * * they're cooperative * * * it would be the best thing if you would wait until this blowed over and at that time I'll call you back to work" (R. 1068; 366-367).

The next day the Company hired Bernard Wines and Norman Griebel, both union members (R. 1070; 218-219). In the next three weeks, during which

⁴Under Section 16 of the Local's bylaws (International Constitution, Article XXI), the first man on a job acts as "Job Steward" (R. 950). Kranenberg was the first member at the Central Paper project (R. 634). Under Section 17, the Job Steward's responsibility was "to ascertain the good standing of men at work" (International Constitution, Article XXI, R. 950).

time, as stated below, Eley made strenuous efforts to secure reinstatement, the Company hired four asbestos workers (R. 1070; 221-233). President Stafford testified that during May and June of 1954 the needs of his business were "steadily increasing." As he stated, "there is no bush to hide behind that we did not have work to reemploy Eley. There is absolutely none. We had plenty of work, there is no question" (R. 1070; 726). And in the following year the Company hired some 35 additional workers (R. 1070; 906-907).

e. Eley's unsuccessful efforts to obtain reinstatement

On or about May 29, nine days after his layoff, Eley sought out Manager Sasser and asked him if the "Local men were placed on jobs and if [he] could go back to work." Sasser replied that he could not; that the card men who were out had not been placed; and that "until that time that they get them placed I can't put you back to work." Eley then showed Sasser his referral card, which on its face expired 30 days after May 10. Sasser said that the referral card was not good any more, that "You'll have to get another one issued from Mr. Fisher before I can put you back to work" (R. 1069-1070; 368, 390). A few days later, on June 3, Eley again asked Sasser when he could return to work and Sasser replied that the card men were still out, that he did not know when they would be back, but promised to call him as soon as things "broke" (R. 1070; 369-370).

f. Local 47 refuses Eley a referral to work for the Company

Eley then applied to Bussiness Agent Fisher for a referral. However, Fisher said that they were not going to issue any more referrals, that "they were going to handle the work themselves" (R. 1070; 369-370, 446-447). On June 8, Eley again asked Fisher for a referral and Fisher said that they were not going to issue referrals to any man who already had a referral (R. 1070; 370-371, 393).

SUMMARY OF ARGUMENT

I. The Board properly found that the parties interpreted and enforced Articles VII and XI of their contracts as union preference clauses, and that the Company and the Association thereby violated Section 8 (a) (3) and (1) of the Act, and Local 47 thereby violated Section 8 (b) (2) and (1) (A).

The facts of the case furnish an adequate basis for the Board's conclusion that the Company, the Association, and Local 47 interpreted Articles VII and XI of the contracts as giving Local 47 the exclusive right to furnish asbestos workers to the Association members, and that the parties understood and enforced these provisions so as to give preference to members of Local 47 over all others. Such interpretation and enforcement of contract provisions giving preference in employment to union members constituted a violation of Section 8 (a) (1) and (3) by the Company and thhe Association, and of Section 8 (b) (1) (A) and (2) by Local 47.

II. The Board properly found that Article IX of the contracts and paragraphs 1, 2, 3, 4, and 6 of the Supplemental Agreements were unlawful on their face.

Contract clauses making provision for specific payments to union members on out-of-town jobs, and making no corresponding provision for nonmembers, discriminate against nonmembers in that they fail to give nonmembers contractual assurances that they will receive the same treatment as members. Even though the employers may have been currently treating nonmembers the same as members, these clauses are discriminatory, nonetheless. Since, without the protection of a binding contract provision, the benefits conferred by these clauses can be discontinued at the will of the employers, an inherent effect of such discrimination is the encouragement of union membership. Accordingly, the inclusion and maintenance of these provisions in the contract constituted a violation of Section 8 (a) (3) and (1) of the Act on the part of the Company, and a violation of Section 8 (b) (2) and (1) (A) of the Act by Local 47.

III. The Board properly found that the discharge of Eley pursuant to Articles VII and XI of the contract constituted a violation of Section 8 (a) (3) and (1) of the Act by the Company, and a violation of Section 8 (b) (2) and (1) (A) by Local 47.

The evidence establishes that the Company laid off Eley because of his nonmembership in Local 47 pursuant to the contract with Local 47, which the parties mutually interpreted as requiring the displacement of nonmembers to provide jobs for unemployed members of Local 47. The Company's conduct in this respect violated Section 8 (a) (3) and (1) of the Act. Local 47's action in enforcing the preferential employment provisions of the contract, which resulted in the layoff

of Eley, constituted illegal causation of employer discrimination in violation of Section 8 (a) (3), and was therefore violative of Section 8 (b) (2) and (1) (A) of the Act.

IV. The Board properly found that the International was also responsible for the unfair labor practices engaged in by Local 47.

The record shows that the International's constitution vests in the International rigid control over the bargaining of Local Unions and requires them to "work under" trade agreements as adopted by the International in convention. The standard agreement thus adopted contains Articles VII, IX, and XI of the contracts here involved, which the Board found were either illegal on their face or were interpreted and enforced in an unlawful manner. In the standard agreement it was also provided that no changes could be made by the Local Unions, except that certain additions, in harmony with the provisions of the standard agreement, might be made. In actual practice, the contracts negotiated by Local 47 in 1953, 1954, and 1955, consisted of the printed forms furnished by the International with the blanks appropriately filled in, plus an addendum supplementing Article IX. The record as a whole supports the Board's conclusion that Local 47, in negotiating and administering the contracts, was an agent of the International.

Alternatively, the International may properly be regarded as a co-sponsor with Local 47 of the provisions of the contract and the practices occurring under them, and is therefore responsible as a joint par-

participant in a common enterprise for acts performed in furtherance of the enterprise by the other participant.

ARGUMENT

I. The Board properly found that the parties interpreted and enforced Articles VII and XI of their contracts as Union preference clauses and that the Company and the Association thereby violated Section 8 (a) (3) and (1) of the Act and Local 47 thereby violated Section 8 (b) (2) and (1) (A)

As stated above, under Article XI of the contracts the employers agreed "to employ the membership of Local No. 47 in the application of pipe and boiler covering, insulation of hot surfaces, ducts, flues, etc." Article VII stated that Local 47 "will direct nonmembers to the employers in the numbers agreed upon and shall issue them referral cards." Local 47 contends that these provisions were not intended to and did not make it the exclusive source of employees for the Association, and that therefore it was not illegal for it to give preference to its members in responding to requests for workers. The Board rejected this contention, however, concluding that these provisions, although ambiguous on their face, were interpreted and enforced by all parties as establishing Local 47 as the exclusive source of employees and as requiring that preference be given members of Local 47. The evidence fully supports the Board's conclusion in this regard.

As noted above, Bond, the president of the Association, testified that he interpreted Article XI as giving union members preference in jobs (*supra*, pp. 4, 7-8). He further stated that the execution of the contracts in question brought about no change in his

company's employment practices, that as under the previous closed shop contracts, he continued to look to Local 47 for all employees, and that only where Local 47 could not furnish men would his company hire men itself, and in such circumstances he would be obliged under the contracts to seek a referral from Local 47 for the men (*supra*, pp. 7-8). According to Bond, who took part in the negotiations leading up to the signing of the new Joint Trade Agreement, there was no discussion in the negotiations of whether the employers would cease giving preference to card men over referral men (R. 102).

The testimony of Manager Sasser of respondent Company concerning the Company's employment practices leaves no doubt that the Company similarly construed the contract provisions as requiring the recruitment of all labor through Local 47, except in emergencies, and as demanding that preference be given to members (see pp. 8-11, *supra*). Furthermore, the record clearly shows that the Company's practice under the contracts was to give card men preference over referral men. Robert Eley, who for some time had been seeking unsuccessfully to join Local 47, was twice laid off by the Company in order to make room for members who were out of work. The first time, as noted above, he was informed by Sasser that Local 47 was "putting their card men in". On the latter occasion, which is the layoff here involved, Sasser told Eley, "You know we have an agreement with the Union to keep all our card men at work * * *. Until they have their men placed on jobs, I can't keep you working" (*supra*, pp. 13, 14).

As to Local 47's understanding and practice under Articles XI and VII of the contracts, Business Agent Fisher's testimony shows that Local 47 construed the contract as entitling it to be the sole source of supply of asbestos workers in the jurisdictional area of the Union. His testimony, in answer to a question about Article VII, that the number of men referred by Local 47 depended upon the amount of asbestos work available in the area served by Local 47, clearly indicates the Local's understanding that Article VII required all asbestos workers in the area be obtained through or cleared by Local 47. The Local's practice of requiring new referral cards every 30 days (*supra*, p. 12, n. 3), served as a means of enforcing an exclusive hiring arrangement. In view of the Local's bylaw prohibiting members from working with nonunion or nonpermit men under penalty of fine, the Local would have no difficulty in securing compliance by employers with such an arrangement. All these circumstances, we believe, support the Board's conclusion that Local 47 interpreted the contracts as setting up an exclusive hiring arrangement.

There can be no question on this record that Local 47, in exercising its powers under this arrangement, gave preference to union members over all others. Business Agent Fisher frankly admitted that he invariably deferred sending nonunion men on jobs until the supply of union members had been exhausted (*supra*, p. 11). His refusal of a referral to Eley after his discharge, on the grounds that "they (i. e., Local 47 members) were going to handle the work themselves," was but another instance of such action.

The foregoing facts furnish an adequate basis for the Board's conclusion that the Company, the Association, and Local 47 interpreted Articles VII and XI of the contracts as giving Local 47 the exclusive right to furnish asbestos workers to the Association members, and that the parties understood and enforced these provisions so as to give preference to members of Local 47 over all others.

Such interpretation and enforcement of contract provisions giving preference in employment to union members constituted, under well established principles, a violation of Section 8 (a) (1) and (3) by the Company and the Association, and of Section 8 (b) (1) (A) and (2) by Local 47. *Red Star Express Lines v. N. L. R. B.*, 196 F. 2d 78, 80-81 (C. A. 2); *N. L. R. B. v. Gottfried Baking Co.*, 210 F. 2d 772, 779-780, 782 (C. A. 2); *N. L. R. B. v. Auchter*, 209 F. 2d 273, 275, 277 (C. A. 5); *N. L. R. B. v. F. H. McGraw & Co.*, 206 F. 2d 635, 637-641 (C. A. 6); *N. L. R. B. v. Local 743, Carpenters*, 202 F. 2d 516, 518 (C. A. 9); *N. L. R. B. v. Construction Specialties Co.*, 208 F. 2d 171, 173 (C. A. 10).

II. The Board properly found that Article IX of the contracts and paragraphs 1, 2, 3, 4, and 6 of the supplemental agreements are unlawful on their face

Article IX of the contracts and paragraphs 1, 2, 3, 4, and 6 of the Supplemental Agreements, which were negotiated by Local 47 as the exclusive representative of the asbestos workers covered by the contracts, provided that *members of Local 47* shall be paid specific sums for board and transportation when on out-of-town jobs (*supra*, p. 7). No similar provision

is made for nonmembers. Members thus are accorded a contractual right to such payments which nonmembers have not been accorded. The legal advantage thus granted members by the Company at the instance of Local 47 renders the contracts illegally discriminatory. As the Supreme Court pointed out in *Gaynor News Co. v. N. L. R. B.*, 347 U. S. 17, 47-48, "Statements throughout the legislative history of the National Labor Relations Act emphasize that exclusive bargaining agents are powerless 'to make agreements more favorable to the majority than to the minority'. [S. Rep. No. 573, 74th Cong., 1st Sess. 13.] Such discriminatory contracts are illegal and provide no defense to an action under Section 8 (a) (3)."

Local 47 contends that these clauses cannot be regarded as illegal unless they provide that their specified benefits are to be granted only to union members, or that nonmembers are to be granted lesser benefits. Local 47 contends further that nonmembers were in fact treated equally and that in these circumstances these clauses cannot be held violative of the Act. Both contentions are without merit.

The provision that the benefits shall be paid to "members of Local 47" limits the legal obligation to pay to this specific group. It creates no obligation to pay nonmembers. The fact that the provisions do not preclude the payment to nonmembers is immaterial. Such payments, if made, depend upon the pleasure of the employer, not upon contractual obligation. It can scarcely be said that the employer's pleasure with respect to nonmembers, even if it includes the payment of benefits for a period

of time at his discretion, affords nonmembers the same advantage as is accorded members by the express provisions of the contracts and Supplemental Agreements.

Even though the employers at the time of the hearing may have been voluntarily making the same out-of-town payments to nonmembers as to members, the failure to give nonmembers the same contractual assurance as was granted union members was itself discriminatory and "an inherent effect of [such] discrimination is encouragement of union membership" (*Gaynor News*, 343 U. S., at 51). Thus, the provisions in question on their face are irreconcilable with Section 8 (a) (3) of the Act and the inclusion and maintenance of these provisions in the contracts, without more, is contrary to Section 8 (a) (3) and (1) and 8 (b) (2) and (1) (A) of the Act. See cases cited under Point I above, *supra*, p. 22. Compare the *Gaynor News* decision of the Second Circuit which involved, in addition to a contract clause granting "special benefits to union members only" negotiated by the exclusive representative, actual disparate treatment of union members and nonmembers under the clause in question which provided for retroactive wage increases (197 F. 2d, at 722-723, affirmed, 343 U. S., at 34-38, 46-47).

III. The Board properly found that the discharge of Eley pursuant to Articles VII and XI of the contract constituted a violation of Section 8 (a) (3) and (1) of the Act by the Company and a violation of Section 8 (b) (2) and (1) (A) by Local 47

As shown above, prior to 1947 the contracts between Local 47 and the employers now comprising

the Association provided for a closed shop. Article VII of the old contracts specifically provided that unemployed members of Local 47 were to displace nonmembers working under permit from Local 47 (*supra*, p. 3).

As late as 1950, although the parties were then operating under a memorandum agreement covering wages and transportation costs only, Company Manager Sasser informed Eley that "even though you have a referral * * * and a card man is available, out of work, that card man will have the job in preference to referral men" (*supra*, pp. 4-5).

As shown in Point I above, the evidence fully supports the Board's finding that the 1953 contract, in effect at the time of Eley's discharge, was uniformly interpreted and enforced by the parties as requiring that preference in employment be given to members of Local 47 (*supra*, pp. 7-11).

Eley's final layoff on May 20 occurred in this context. On this occasion, as we have seen, Fisher, the business agent of Local 47, called the Company and told President Stafford that the Montague job was closing down, resulting in the layoff of a number of union members, and asked whether the Company "could put any men on" (*supra*, p. 13). President Stafford immediately instructed Manager Sasser to "take on what men he could." Sasser that same day laid Eley off with the explanation "you know we have an agreement with the Local to keep all our card men in work" (*supra*, p. 13). Kranenberg, who was both job foreman for the Company and a job steward in Local 47, made similar comments about Eley's not

being able to work as long as any Local 47 member was unemployed (*supra*, p. 13-14). The next day the Company hired two members of Local 47 for the Central Paper project and in the next three weeks hired through Local 47 four more asbestos workers for its various jobs. Eley was not given a job although he repeatedly applied to the Company during this period, and also sought another referral from Local 47, which was refused (*supra*, p. 15-16).

The foregoing facts fully warranted the Board in concluding that the Company had laid off Eley because of his nonmembership in Local 47 pursuant to the contract with Local 47, which the parties mutually interpreted as requiring the displacement of nonmembers to provide jobs for unemployed members of Local 47. Such conduct on the part of the Company clearly constituted a violation of Section 8 (a) (3) and (1) of the Act.

Similarly, Local 47's action in enforcing the preferential employment provisions of the contract as a means of making jobs available for unemployed union members, which resulted in the layoff of Eley, constituted illegal causation of employer discrimination in violation of Section 8 (a) (3), and was therefore violative of Section 8 (b) (2) and (1) (A) of the Act. *N. L. R. B. v. Gottfried Baking Co.*, 210 F. 2d 772, 783 (C. A. 2); *N. L. R. B. v. Construction Specialties Co.*, 208 F. 2d 170, 172-173 (C. A. 10); *N. L. R. B. v. Local 743, Carpenters*, 202 F. 2d 516, 517-518 (C. A. 10). It is immaterial that Local 47 did not in so many words request the Company to lay off Eley. Under the contract as construed by the

parties, it was incumbent upon the Company to lay off nonmembers whenever it became aware that members were out of work. Local 47's notification to the Company that a number of members were out of work as a result of the closing down of the Montague project was clearly sufficient, under the contract, to create an obligation on the part of the Company to lay off nonmembers to make room for members. Thus, it was Local 47's request to the Company "to put men on" which caused Eley's layoff under the illegal arrangement. In neither the *Gottfried* nor the *Local 743* cases cited above was any request made by the union that a specific employee be refused employment. In each case the employer, solely in reliance upon an illegal union-security agreement, refused qualified applicants employment because they lacked the union clearance required by the illegal agreement. In both cases the courts upheld findings of violations of Section 8 (b) (2) and (1) (A) against the unions involved. Local 47's contention, that no finding can be made against it in the absence of evidence that it specifically requested Eley's discharge, thus must be rejected.

IV. The Board properly found that the International was also responsible for the unfair labor practices engaged in by Local 47

As noted above, the Board found that the International was jointly responsible with Local 47 for the negotiation, interpretation, and administration of the unlawful contract provisions, and their enforcement to the detriment of Robert Eley (R. 1106). The Board's conclusion in this respect is based upon

the control exercised by the International over the bargaining of its Local Unions pursuant to its constitution and also the general relationship between the International and its Local Unions, as provided in the International constitution.

The Local Unions are the creatures of the International and their power and authority is strictly limited by the International.⁵ With respect to collective bargaining, the International maintains especially rigid control over the Local Unions. Article XVIII, Section 13 of the International's constitution provides that Local "Unions shall work under trade agreements as adopted by the International Association" (R. 942). Pursuant to this provision, as implemented by Article IX, Section 3, the International furnishes to all locals a printed standard form of agreement containing appropriate blanks to be filled in (R. 926, 956-964). The current standard form, adopted at the International's 1952 convention, recites that the Local Unions shall be "principals" to all collective bargaining contracts and, emphasizing the very narrow bargaining authority of the Local Unions, states that the agreement "is not subject to change by a Local Union. Any provision not in conflict with

⁵ The constitution provides that Local Unions are "subordinate branches" of the International (Article XVIII, Section 1, R. 939), and that membership therein "must be with the consent of the International Association" (Article III, Section 11, R. 919). The International prescribes the bylaws under which the Local Unions are required to operate (Article XX-XXI, R. 943-950).

its letter and spirit may be agreed upon and attached to it in the form of addenda" (R. 956).⁶

In negotiating the contracts here involved Local 47 faithfully followed the course prescribed for it by the International. The contracts consist of the printed standard forms supplied by the International, with the blanks properly filled in, together with the Supplemental Agreements implementing Article IX of the contracts with respect to such matters as wage rates to be paid members of Local 47 when assigned to out-of-town jobs (R. 869-890).⁷ The contracts include

⁶ In other respects, as well, the International retains broad powers over its Local Unions and strictly limits their autonomy. Article XVIII, Section 5 provides that "Local Unions, as *subordinate* branches of the International Association, can only exercise local autonomy in matters upon which the International Constitution and bylaws are silent" (R. 940). All questions as to the extent of local union authority are to be "referred to the International Secretary for decision" (Article XX, Section 5, R. 945). The General Executive Board can levy a general membership assessment whenever necessary to meet expenses (Article IV, Section 2, R. 920). Under Article XVIII, Section 1 and Article X, Section 15, Local Unions "can be reorganized, suspended, or disbanded with charter revocation *by action of the General Executive Board or convention*" when it appears that "such action is in keeping with the best interests of the Local membership of the International Association" (R. 939, 929-930). The International President has "authority to suspend Local Union officers and appoint their successors pending hearing" (Article VII, R. 924). Suspended local unions are requested immediately to forward to the International all their books and moneys (Article XVIII, Section 6, R. 940).

⁷ While petitioners urge that the International's form of agreement permits bargaining on many subjects not covered by

Article IX which, as shown above, on its face illegally discriminates against nonmembers, and also Articles VII and XI, which the Board found were interpreted and enforced as union preference contracts (R. 879, 871, 877, 878, 884, 885).

From the foregoing it is apparent, as the Board found (R. 1104), "that in the performance of its collective bargaining functions, Local 47 is not a free agent with complete autonomy to conclude negotiations independently of the International's control." As stated above, the International's constitution required that its standard agreement be followed by its Local Unions in all bargaining negotiations. Local 47 in this case faithfully adhered to this requirement with the result that the parties agreed to the illegal clauses here involved, as was contemplated by the International. In view of these facts, and having in mind the general relationship between the International and Local 47 under the International's constitution and Local 47's status as a "subordinate branch" of the International, the Board could fairly conclude that Local 47 was the agent of the International in the negotiation and administration of the contracts.

the agreement, we believe that bargaining on such subjects is prohibited by the express provision in the standard agreement that it "is not subject to change by a Local Union." The provision permitting additions to the provisions of the International agreement, provided that they are "not in conflict" therewith, does not allow the Local to bargain as a free agent in its own interest since the standard provisions are drawn with specificity and allow little room for variation.

There is judicial support for the Board's conclusion. See *N. L. R. B. v. Chicago Typographical Union No. 16*, 193 F. 2d 782, 804-805 (C. A. 7), enforcing 86 N. L. R. B. 1041, in which the Board concluded, in part upon the basis of constitutional provisions, which defined "the relationship between the members, the Local, and the International," and which imposed "stringent limitations on the power of the Local * * * to shape the terms of the collective contract," that the International as well as the Local was responsible for violating Section 8 (b) (3) of the Act (86 N. L. R. B., at 1045-1047).

See also *United Mine Workers v. Patton*, 211 F. 2d 742, in which the Fourth Circuit, on the basis of an organizational structure comparable to that here, held that the United Mine Workers of America was responsible on an agency basis for the actions of District 28 of the Mine Workers in encouraging a strike. The Court, noting that District 28 "was a mere division of the international," concluded that "in carrying on organizational work the field representative [of District 28] is engaged in the business of both the international union and the district and both are responsible for his actions. In support of its conclusion the Court quoted from *United Const. Workers v. Laburnum*, 194 Va. 872, 75 S. E. 2d 694, 703-704, in which the Supreme Court of Appeals of Virginia stated that "District 50 * * * an arm or branch of the United Mine Workes of America * * * is a component part of the United Mine Workers of America or at least its agent in organizing workers in businesses other than that of mining coal" (emphasis

added by C. A. 4, 211 F. 2d, at 746). Similarly, it is fair to say that the Local here, in negotiating the contract required by the International, was engaged in the business of the International and was therefore its agent for such purposes.

The International and Local 47 contend that there is no evidence establishing the creation of an agency relationship between the International and Local 47, that the Local is a separate entity from the International, and that the mere fact of affiliation is not sufficient to render the International responsible for all acts of the Local. The Board recognizes that the mere fact of affiliation does not in and of itself subject the International to liability. The Board also recognizes that the Local is a separate entity for certain purposes. However, as shown above, the evidence in this case establishes that under the International's constitution, as implemented by the adoption of the International agreement, the Local Unions were constituted agents of the International for the purpose of negotiating collective bargaining agreements. The practice of Local 47 in negotiating the contracts here involved, the Board believes, fully confirms the existence of such an agency relationship. The arguments to the contrary, it is submitted, overlook the true significance of the arrangement created under the International's constitution and cannot be reconciled with the evidence discussed above which so clearly shows that Local 47 was not a "free agent" in the negotiations.

In any event, regardless of the International's liability on an agency basis, it may reasonably be

regarded as "a cosponsor of the provisions of the contract and the practices occurring under them," as the Board found (R. 1106). As such, it is responsible as "a joint participant in a common enterprise for acts performed in furtherance of the enterprise by the other participant" (R. 1106). As stated above, although the Local was the nominal party to the contract, under the scheme of bargaining established by the International's constitution only the International's standard form of contract could be proposed by Local 47, and the International was therefore a real party in interest in the negotiations even though its representatives were not physically present at the negotiation meetings. By reason of this fact and the extensive control over the actions of Local 47 possessed by the International, it is reasonable to regard both the Local and the International as joint participants in a common enterprise. Accordingly, the Board properly found that the International and Local 47 were both responsible for the contract negotiated and the practices occurring under them. 48 C. J. S. 866-867; *Goerig v. Continental Casualty Co.*, 167 F. 2d 930, 932 (C. A. 9); *N. L. R. B. v. Auchter Co.*, 209 F. 2d 273, 274-275 (C. A. 5), enforcing 102 N. L. R. B. 881, 901. Cf. *Chicago Typographical Union No. 16 v. N. L. R. B.*, 193 F. 2d 782, 802-805 (C. A. 7).

Consistent with this principle, the Courts have repeatedly held that one employer may be held responsible for the unfair labor practices of an affiliate where the former controls the labor relations of the latter. *N. L. R. B. v. Condenser Corp.*, 128 F. 2d

67, 71-72 (C. A. 3); *N. L. R. B. v. Somerset Classics*, 193 F. 2d 613, 614-615 (C. A. 2), cert. denied, 344 U. S. 816; *N. L. R. B. v. New Madrid Mfg. Co.*, 215 F. 2d 908, 913 (C. A. 8); *N. L. R. B. v. Concrete Haulers, Inc.*, 212 F. 2d 477, 479 (C. A. 5); *N. L. R. B. v. McCatron*, 216 F. 2d 212, 213-214 (C. A. 9), cert. denied, 348 U. S. 943). This principle is equally applicable in the case of affiliated unions.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition to set aside the Board's order should be denied, and that the Board's petition for enforcement should be granted in full.

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JANUARY 1958.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,015

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS
AND ASBESTOS WORKERS, AFL-CIO, AND INTERNATIONAL
ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS
WORKERS, LOCAL 47, AFL-CIO, *Petitioners*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

No. 14,093

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

ALEXANDER-STAFFORD CORPORATION, AND THE MASTER IN-
SULATORS ASSOCIATION, *Respondents*.

On Petition to Review and on Petition for Enforcement
of an Order of the National Labor Relations Board

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STATEMENT OF QUESTIONS PRESENTED

Whether the Board properly found that Local 47, and also the Company and the Association, interpreted, administered, and enforced the 1953 contract, and entered into, interpreted, administered, and enforced the 1954 and 1955 contracts, as union preference contracts, and that thereby Local 47 violated Section 8(b)(2) and (1)(A) and the Company and the Association violated Section 8(a)(3) and (1) of the Act.

Whether the Board properly found that Article IX of the contracts and paragraphs 1, 2, 3, 4, and 6 of the Supplemental Agreements are unlawful on their face.

Whether the Board properly found that Local 47 interpreted and enforced the 1953 contract as a preferential contract, which caused the Company to discriminate against Eley in violation of Section 8(a)(3) and (1) of the Act, and thereby violated Section 8(b)(2) and (1)(a) of the Act.

Whether the Board properly found that the responsibility for the unfair labor practices found by the Board to have been committed by Local 47 is attributable also to the International.

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,015

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS
AND ASBESTOS WORKERS, AFL-CIO, AND INTERNATIONAL
ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS
WORKERS, LOCAL 47, AFL-CIO, *Petitioners*,

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No. 14,093

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

ALEXANDER-STAFFORD CORPORATION, AND THE MASTER INSULATORS
ASSOCIATION, *Respondents*.

ON PETITION TO REVIEW AND ON PETITION FOR ENFORCEMENT
OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR PETITIONERS IN NO. 14,015

Jurisdictional Statement

This case is before the Court upon the joint and several petition of the International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO (hereinafter referred to as the "International") and Local 47 of the International Association of Heat and Frost Insulators and Asbestos Workers, AFL-CIO (hereinafter referred to as the "Local") (hereinafter the International and the Local jointly referred to as the "Petitioners"), asking this Court to review and set aside the Decision and Order (R. 1102-

1116)¹ of the National Labor Relations Board (hereinafter referred to as the "Board") issued against the Petitioners on June 7, 1957, pursuant to Section 10(e) of the Labor Management Relations Act (hereinafter referred to as the "Act"), as amended, 61 Stat. 136, 29 U.S.C. 151, et seq.

The Board has petitioned for enforcement of its order against the Petitioners and also against the Alexander-Stafford Corporation (hereinafter referred to as the "Company") and the Master Insulators Association (hereinafter referred to as the "Association").

The jurisdiction of this Court is based upon Sections 10(e) and (f) of the Act. The Board's Decision and Order are reported at 118 NLRB No. 14.

STATEMENT OF THE CASE

The Parties

This case arises as a result of charges filed with the Board by Mr. Robert Eley (hereinafter referred to as "Eley") against the Petitioners and the Association and the Company as a result of his alleged discharge by the Company on May 20, 1954.

The International is an unincorporated international labor organization with its general office in the District of Columbia. It has many affiliated local labor unions throughout the United States and Canada. The Local is an unincorporated local labor organization affiliated with the International and it operates in the vicinity of Grand Rapids and Lansing, Michigan.

The Association is comprised of many insulation contractors and exists primarily for the purpose of collective bar-

¹ The parties, by prehearing stipulation and order, have undertaken to print a joint appendix, to be prepared following the exchange of briefs. To avoid changing the page references in the typewritten briefs, the printed appendix will be keyed to the pages of the record as certified to the Court. For convenience, these pages will be referred to herein as "R. . . ."

gaining with the local (R. 1058, 1074). The Company is a member of the Association (R. 1055). The Association and the Company are engaged in commerce within the meaning of the Act (R. 1056).

The Background

Eley was first employed by the Company in 1950 as a building tradesman (R. 1057) and was employed almost continuously by the Company until the date of his alleged discharge on May 20, 1954. During all this period the employees of the Company were represented by the Local, and the Company executed collective bargaining agreements with the Local until 1953 when they were executed by the Association on behalf of its employer members, which included the Company (R. 1057). Eley is not and never has been a member of the Local. During the course of his employment he was issued referral slips by the Local (R. 1066). On May 20, 1954, Mr. Fisher, the Business Agent of the Local, notified the Company that a particular construction project was closing down and many members of his Local were available for work and asked if the Company could use any (R. 1067). Thereafter on the same day the alleged termination of Eley was effected. (The nature of Eley's termination is in dispute. Eley claims to have been discharged by Mr. Sasser, a supervisor for the Company. Mr. Sasser has denied that he discharged Eley. The Petitioners herein have no direct knowledge of the nature of the termination and must rely upon this Court's evaluation of the facts herein.) (R. 1068-1071)

The Unfair Labor Practice Charge

The Unfair Labor Practice Charge was filed on behalf of Eley on October 8, 1954. It charged that:

"The Local Union named herein, through its agents, did on or about May 20, 1954 bring about the discharge of complainant by advising his employer that complainant was not a member of the said Union and was not

entitled under the existing contract to work for employer. The Local Union further advised said employer that it would cause a work stoppage by all the employer's Union employees if complainant was allowed to continue his employment.

"The Local Union has also blocked complainant's attempts to secure other employment in his trade and craft by advising several employers that complainant was not a member of their Union and not eligible for membership and threatening a work stoppage by Union workers if complainant was hired.

"Complainant states the facts to be that he is qualified to be a member of the Union by reason of his experience and apprenticeship and that he has never refused to pay dues or fees necessary to membership in that Union. To the contrary complainant has repeatedly made application for membership in the Union to both the Local and the International and has offered his initiation fees and monthly dues but such offers have been rejected.

"The aforesaid action of the Local Union has had the approval, authorization and consent of the named International Union."

A complaint was filed by the General Counsel of the Board on May 27, 1955 alleging that the Petitioners were parties to collective bargaining agreements since June 1, 1953 which contained illegal closed-shop provisions granting a greater degree of union security than permitted by the Act and other provisions affording illegal preferential treatment in the terms and conditions of employment for union members, and required as a condition of employment that employees be members of the Union or have referral cards or work permits from it. It alleged that the discharge of Eley was caused by the Petitioners because he was not a member of and did not possess a work permit or referral from the Union and that thereafter he was repeatedly refused reinstatement for the same reasons (R. 1054).

The Petitioners in their separate answers denied that they had committed any unfair labor practices (R. 1054).

The Trial Examiner's Intermediate Report

I. LOCAL UNION

1. *Contract Clauses*

With respect to the contracts complained of herein the Trial Examiner found that Article IX (R. 1059) and paragraphs 1, 2, 3, 4, and 6 of the Supplemental Agreement (R. 1060) provided for expenses for "Members of Local 47" or "Members" and was silent as to expenses for nonmembers, and was therefore discriminatory and unlawful on its face (R. 1060). He found that Article VII (R. 1059) complained of was ambiguous and in order to understand its meaning it was necessary to look to the practice of the parties under it (R. 1061). He concluded that the Company and the Local shared the understanding and practice of giving preference in the holding of jobs to Local members over nonmembers. With respect to the Local he based this conclusion on a bylaw of the Local which was adopted in 1943 or 1944 and has never been repealed or changed which is as follows:

"Any member of Local No. 47 found working with any man not holding a Permit or Union Card shall be called before the Executive Board and fined accordingly" (R. 1063)

and the testimony of Fisher concerning his efforts to secure work for members of the Local and his issuance of referrals to nonmembers (R. 1064-1066). He held that the existing hiring practices could not have been possible without the understanding, cooperation, or participation of both the Company and the Local.

2. *Eley*

The Trial Examiner held that Eley was discriminatorily discharged by the Company and that his discharge was a direct result of the enforcement of the 1953 contract as a

preferential hiring contract for which the Local is liable. He further held that the action of withholding a referral from Eley subsequent to his discharge caused the Company to discriminatorily refuse to employ Eley thereby violating Section 8(b)(2) and (1)(A) of the Act (R. 1074).

II. INTERNATIONAL

The Trial Examiner after reviewing pertinent provisions of the Constitution of the International and a review of the testimony held that the complaint against it should be dismissed. He held that only the Local and not the International was a party to the 1953, 1954, and 1955 contracts, that there was no evidence that the International participated in the negotiations and the fact that the International provided the master agreement did not make it a party to them or responsible for their execution. He found that the only clauses found to be unlawful on their face were contained in the supplemental agreements not supplied by the International and in no event could the International be held responsible. He found that those clauses which were unlawful as interpreted, administered, and enforced by the Local were not shown by any evidence to have been interpreted, administered, or enforced in the same manner by the International, that the record is devoid of any evidence as to how the International interpreted, administered, or enforced said clauses, or that it did so at all, that the Association executed the Agreement knowing that the Local was the other party to the agreement and that the advance approval of the International was solely to indicate that the contracts were not in violation of the International's Constitution and Bylaws. He further held that the International had no connection with the discharge and non-reinstatement of Eley. (R. 1075-1078)

The Board's Decision and Order

The Board issued its decision on June 7, 1957 (R. 1102-1116). It affirmed all the rulings, findings, conclusions, and

recommendations of the Trial Examiner with respect to the Local, with a modification in the recommended order. With respect to the International it rejected the dismissal recommended by the Trial Examiner and held the International responsible jointly with the Local for negotiation, interpretation, administration, and enforcement of the unlawful provisions of the contracts including their enforcement against Eley. The Board reasoned after an examination of the International's Constitution and Bylaws that the Local was not a free agent in its negotiations since it is a subordinate branch of the International and was required to work under the International Form of Agreement, that it was compelled to accept the unlawful clauses of the contracts, that the Local was acting as the agent of the International and its unlawful conduct is imputable to the International, that the International's requirement that the Local use the contracts caused it to participate in the bargaining negotiation, although no representatives were physically present, that the International necessarily contemplated that the Local would interpret and administer the terms of the contracts in accordance with the International's intent when it adopted them, that the International is a co-sponsor with the Local and as such has the responsibility for joint participation in a common enterprise (R. 1104-1106).

It accordingly held that the International and the Local violated Sections 8(b)(2) and (1)(A) of the Act.

STATEMENT OF POINTS

1. The Board erred in concluding that the Local entered into, interpreted, administered, and enforced unlawful union preference contracts.
2. The Board erred in concluding that Article IX of the contracts and paragraphs 1, 2, 3, 4, and 6 of the Supplemental Agreement are unlawful on their face.

3. The Board erred in concluding that the Local interpreted and enforced its 1953 contract in such a manner as to cause the Company to discriminate against Eley.

4. The Board erred in reversing the findings of the Trial Examiner and finding the International jointly responsible for the activities of the Local.

SUMMARY OF ARGUMENT

The terms of the contracts between the Local and the Association did not provide for unlawful union preference in regard to hiring and firing and the Local was not a party to trade practices during the term of its collective bargaining agreements which provided for unlawful union security. The testimony of employer representatives was entirely as to unilateral company practices to which the Local had no part. Liability on the part of the Local is not established by virtue of an obsolete local bylaw adopted in 1943. Nor is liability established by the testimony of the business agent of the Local as to his attempts to secure employment for the members of the Local when neither under the terms of the contracts nor under the local trade practice does the Local claim to be the exclusive hiring agency for the Association.

A contract clause which uses the expression "Members of Local 47" cannot by that fact alone be termed discriminatory on its face.

The Local did not in any way affect the employment status of Eley despite charges made by Eley against the Local. Not one of said charges was established by the testimony. The Local did not request Eley's discharge by the Company nor did it perform any acts to prevent his re-employment.

Section 8(b) of the Act prohibits "a labor organization or its agents" from engaging in the enumerated unfair labor practices. Congress intended that the common law agency

principles should apply which imputes the acts of one person to another only when acting as agent for the other. Admittedly no representative of the International participated in the negotiations or execution of the contracts, their interpretation or enforcement, or the employment practices in existence, or was in any way connected with the discharge or non-reinstatement of Eley. The mere fact of affiliation between a local and an international does not make the act of one the responsibility of the other. The Local executed all contracts in its own name, in its own interest and did not at any time purport to act as agent for the International. The provision in the International Constitution requiring the Local to work under an adopted form of agreement does not make the Local an agent of the International nor does it establish a joint venture between the International and the Local, which would make the International liable for the execution of the agreement or the employment practices of the Local and/or its employers.

ARGUMENT

I. THE LOCAL DID NOT VIOLATE SECTIONS 8(b)(2) AND (1)(A) BY VIRTUE OF THE PROVISIONS OF THE CONTRACTS OF THEIR INTERPRETATION, ADMINISTRATION, OR ENFORCEMENT.

Section 8(b)(1)(A) of the Act prohibits a union from coercing an employee in the exercise of his rights guaranteed in Section 7 of the Act. Section 7 protects the right of an employee to join or not join a union as he sees fit. The testimony reveals that there was no attempt on the part of the Local to induce Eley to become a member of the Local. He stated that he had requested membership for some five years (R. 1067) but had been refused by the Local, which is the privilege of the Local under the express provisions of 8(b)(1).

Section 8(b)(2) of the Act prohibits a union from discriminating against an employee or causing an employer

to discriminate against an employee, in violation of 8(a)(3) of the Act, in regard to employment to encourage or discourage membership in a union. The argument set out below will demonstrate that the Local does not control the hiring practices of the Company by agreement or otherwise, that it has not been a party to any activity designed to encourage membership in the Local in violation of the Act.

A. Contract Terms

The terms of the Contracts between the Local and the Association did not provide for unlawful union preference in regard to hiring and firing. The clause in question, Article VII, provides as follows:

"Local No. 47 will direct non-members to the employers in the numbers agreed upon and shall issue them Referral Cards for the purpose of identification and classification."

It is submitted that this clause does *not* require the Association or the Company to secure *all* its employees from the Local nor does it provide that union members are to be preferred in any way over nonmembers. It does *not* provide that nonmembers may be hired only through the Local and it does *not* provide that nonmembers may only be hired if members are not available.

An examination of the contract will show that there is in fact *no union security clause* in the agreement. The reason for not including a union security clause can easily be understood because of the inconsistency of State laws. This is particularly true in the field of union security, since so many of the States have right-to-work statutes which prohibit any form of union security. A clause which might be valid under the provisions of the Taft-Hartley Act would be invalid in those States which have such right-to-work laws.

Simply, under the terms of the agreement the Company may employ anyone. The Local naturally will provide its

own members and upon request such nonmembers as the Company desires. The Local does not represent itself as an exclusive hiring agency with the responsibility of providing all employees and on a non-discriminatory basis. Under the Act there is no responsibility on the part of the Local to be an exclusive hiring hall, nor is there a prohibition from the Local's assisting the Company in securing nonmembers upon request.

The Board held as far back as February 7, 1951 that a contract which merely requested the employer to notify the union of vacancies and the union agreed when requested to supply personnel within two or three days was not invalid, since there was no contractual obligation either that the workers be obtained from the union or that only union members be employed. *American Pipe and Steel Corp.*, 93 NLRB 54. It has also been held that the practice of an employer in using a union's employment agency facilities and hiring, on most occasions, applicants referred by the union was not, as such, evidence of discrimination. *Missouri Boiler and Sheet Iron Works*, 93 NLRB No. 21.

The Board has also stated that an employer's practice of requesting a union to refer employees is permissible under the Act, particularly, since most of the qualified employees in the area were members of the union, and the company looked to the union as its principle source of recruitment. *Maxon Construction Co.*, 112 NLRB No. 62.

B. Employer Trade Practices

The evidence does not establish that the Local was a party to trade practices, during the terms of its collective bargaining agreements with the Association, which provided for unlawful union preference. The only testimony on general trade practices was presented by the President of the Association, John Bond (R. 1061). However his testimony was to the effect that the only Company he had any knowledge of was his own (R. 158). He further stated that

he understood that he had the right to go out and hire non-members. The reason this was not his practice was because he wouldn't "get competent help" (R. 158).

Mr. Sasser testified as to his activities as supervisor for the Company (R. 1061, 1062) but here again Mr. Sasser is only testifying as to his unilateral practice and not a mutual trade practice understood and practiced by the Local and the Association.

The testimony of Mr. Bond and Mr. Sasser does no more than recognize the fact that a building trade union is in effect a pool of labor to service a community. There are normally only so many buildings erected in a given area in a year. No contractor knows at the time of bidding who will be awarded the contracts. It is not unusual that one contractor may be awarded most of the work one year and another the next year. It is unconceivable that an employer in this type of a market should operate at his peril if he were to request the union to furnish him qualified men who have an established association with the trade. It would be manifestly unjust to conclude that a local which provides qualified employees upon request would be violating the Act. In the words of Mr. Sasser it is normal to "go to the man who knows where labor is when we are in need of labor" (R. 1062). It would appear that the Board recognized this principle in the case of *Associated General Contractors* 113 NLRB No. 7, wherein it stated:

"To the extent that the Trial Examiner seems to suggest that whenever a labor union is asked by an employer to refer workers it violates the Act unless it does so on a non-discriminatory basis, even if there is no arrangement in regard to referrals, we do not adopt and need not pass on such dicta."

It is the position of the Petitioners that the liability if any depends upon the activity of the Local and its agents, that it is not responsible for the trade practices of the Association and the Company which they have established for the successful operation of their businesses.

C. Union Trade Practices

The activity complained of on the part of the Local is an unrepealed bylaw of the Local (R. 1063) and the trade practice testified to by Fisher (R. 1064-1066).

With regard to the bylaw of the Local it must first be pointed out that this bylaw was adopted in 1943, before the amendments to the Act prohibiting a closed shop in 1947. While it is conceded that the bylaw is still on the books of the Local, it is obsolete by virtue of the fact that the provision of the International Constitution providing for the permit system was removed by Convention in 1952. It would be unrealistic to expect a local labor union unschooled in the details of parliamentary procedure to fully understand the implications of not repealing a bylaw which it passed in 1943.

With respect to Fisher's testimony the Petitioners readily admit that he sought to secure employment for the members of the Local. Since the Local did not represent itself as a hiring hall and the exclusive source of employees for the Association, it had no duty to keep lists of members and nonmembers or refer nonmembers to employers except upon request. Any other conclusion would imply that all construction labor unions must operate a hiring hall. It is contended by the Petitioners that the Local was free to provide its members to employers upon request and it was under no duty to consider itself the exclusive hiring hall for the requesting employer.

II. CONTRACTS WHICH INCLUDE THE PHRASE "MEMBERS OF LOCAL 47" ARE NOT UNLAWFUL ON THEIR FACE.

Article IX of the contracts provided for expenses for "Members of Local 47." Some of the paragraphs in the supplemental agreements use the same phrase or the phrase "Members." The Board holds that the use of such provisions without provision for nonmembers results in dis-

crimination on the face of the contracts. The fact that the expression "Members of Local 47" is used in the contracts does not command the conclusion that any nonmembers employed by the Company shall not receive the identical benefits. In order for the contract to be discriminatory on its face it would have to provide that certain benefits were to be provided *only* to union members or a provision would have to be included to provide for *lesser benefits for nonmembers*.

The contracts lack a union security provision of any type. The Company was free under the terms of the contract to hire, without notice to the Local, any nonmembers, with or without a referral card from the Local. It would be reasonable to assume that even though the contract makes no specific provision for it, the Local would insist that all employees be treated equally in order that nonmembers would not have a competitive advantage over members. As a matter of fact nonmembers did receive the same expense money in all respects as did members (R. 1060). In any event these paragraphs could in no way affect the hiring and firing practices of the parties.

III. THE LOCAL DID NOT PERFORM ANY ACTIVITY WHICH CAUSED THE COMPANY TO DISCRIMINATE AGAINST ELEY.

The Local can in no manner be responsible for the discharge or non-reinstatement of Eley. It is charged against the Petitioners, Eley alleged, that his discharge was caused as a result of the Local's advising his employer that he was not a member of the Local, that the Local threatened a work stoppage if Eley was allowed to continue his employment, and that the Local advised several employers not to hire Eley because he was not a member of the Local.

A review of the testimony reveals that not one of these charges has been substantiated. It is apparent that the matters alleged were mere conjecture on the part of Eley, matters for which there was no proof, matters which were

in fact unfounded. The evidence reveals that the only activity of any nature with regard to Eley was that a request was made by the Local to the Company that it find employment for members of the Local on the same day that he was discharged by the Company.

Eley in his testimony complained that he was refused a referral card subsequent to his discharge when he requested one from Fisher, the agent of the Local. At the time the request was made Fisher had no request for employees and therefore, would have no basis for issuing such a referral slip to Eley or any other employee at that time. As indicated above, the Local has no duty to maintain lists of nonmembers who request employment since at no time did it undertake to be the exclusive hiring agency of the Company.

From this it is obvious that the Local did not cause the discharge nor did it prevent the re-employment of Eley by the Company. The testimony revealed that the charges were completely unfounded in every respect and the best that the Board could attempt to establish, was some trade practices among the parties which it likewise failed to do.

IV. THE INTERNATIONAL IS NOT RESPONSIBLE FOR THE ACTIVITIES OF THE LOCAL.

A. The International has violated Section 8 (b) of the Act only if its "agent" has done so.

The Board has held that the International violated Sections 8(b)(2) and (1)(A) of the Act. Section 8(b) of the Act prohibits "a labor organization or its agents" from engaging in designated unfair labor practices. Section 2 (13) of the Act provides that:

"In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

We may conclude from this language that the responsibility for the acts of another may be attributed to a person only when that other is *acting as his agent*. This Court so held in *Garment Workers' Union v. NLRB*, 99 App. D.C. 64, 70, 237 F. 2d 545, 551 as follows:

"But the legislative history of Section 2(13) makes plain that Congress intended to do no more than restore the applicability, which preclude imputation of the acts of one person to another except when the one is acting as agent for the other."

Under agency principles responsibility for the acts of another can only arise from (1) actual authority, (2) apparent authority, or (3) ratification. Any designation on the part of a principal shall be such as to cause the agent to believe that the principle desires him to "act on the principal's account." Restatement, Agency, Sec. 235.

The Board in its opinion admits that there were no representatives of the International who participated in the contract negotiations (R. 1105) and no evidence of any International activity associated with the events leading to the alleged discrimination against Eley or with the general interpretation, administration, and enforcement of the contracts (R. 1106).

However, the Board has advanced the theory that by virtue of a provision in the Constitution and Bylaws of the International, which provides for a model form of collective bargaining agreement to be utilized by the Local and requires the Local to work under this agreement, that the Local becomes the agent of the International and the separate status of each entity is abolished, that they then become joint participants in a common enterprise. The Local is at once the agent of, and a co-sponsor with the International.

Clearly the Board does not contend that the International is directly responsible for the activities of any individual, but rather for the activities of the Local by virtue of the

contractual relationship between the Local and the International as evidenced by the International Constitution.

B. There is no apparent authority for the Local to act for the International.

The mere fact of affiliation between a local union and an international union does not make the act of one the responsibility of the other. It was recognized in the celebrated case of *United Mine Workers of America et al. v. Coronado Coal Company et al.*, 259 U.S. 344, that international unions and their affiliated local organizations are separate entities. In that case there was evidence of some actual participation by international officers in the activities complained of but the Court nevertheless held:

"The argument of counsel for the plaintiffs is that because the National body had authority to discipline District organizations, to make local strikes its own and to pay their cost, if it deemed it wise, the duty was thrust on it when it knew a local strike was on, to superintend it and prevent its becoming lawless at its peril. We do not conceive that such responsibility is imposed on the National body. A corporation is responsible for the wrongs committed by its agents in the course of its business, and this principle is enforced against the contention that torts are *ultra vires* of the Corporation. But it must be shown that it is in the business of the corporation. Surely no stricter rule can be enforced against an unincorporated organization like this. Here it is not a question of contract or of holding out an appearance of authority on which some third person acts. It is a mere question of actual agency which the constitutions of the two bodies settle conclusively. If the International body had interfered or if it had assumed liability by ratification different questions would have arisen."

The doctrine which recognizes that international unions and their local unions are separate entities was recognized by this Court in *DiGiorgio Fruit Corp. v. NLRB*, 89 App. D.C. 155, 191 F. 2d 642, where it was held that a farm local

union was not the agent of its parent national union. It is noted again that in the *DiGiorgio Fruit Corp.* case the fact that two National representatives assisted the local in the course of its strike was not, under the facts, sufficient to make the local an agent of the national union.

Congress likewise recognized that locals and internationals are separate entities when it made the distinction between "labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit," in Section 9(f) of the Act.

Clearly there is no apparent authority that this Local represents the International for any purpose whatsoever.

C. There is no actual authority for the Local to act for the International.

An analysis of the International Constitution will reveal that there is no actual authority for the Local to act for the International. The Local conducts its own affairs for and on behalf of its membership. It establishes its own dues (R. 931), and pays its own officers, conducts its own meetings (R. 944), and elects its own officers (R. 946). This is accomplished without interference or control by any International representatives. There is nothing in the Constitution which grants the Local authority to act on its behalf nor does it infer that this Local is granted authority to represent the International in any way.

D. The International is not liable for acts of the Local which it performs in its own behalf.

It is a long-standing common law rule of agency that the principal is not liable for actions his agent may take in his own interest and not for the purpose of serving his master. Restatement, Agency, Sec. 235; *Davis v. Green*, 260 U.S. 349, 351-354, *Park Transfer Co. v. Lumbermans Mutual Casualty Co.*, 79 App. D.C. 48, 142 F. 2d. 100.

We may readily infer from the explanation of the meaning of a "labor organization or its agents" as used in Section 8(b), made by the Senate Committee which originated this provision that it was the intention of Congress that this principle be applied when it stated:

"The term 'agents' is intended to include all union officials acting *in their capacity* as union representatives * * *. S. Rep. No. 105, 80th Cong., 1st Sess., 21, (Emphasis Supplied)."

Persons are thus responsible as "agents" only when they act "in their capacity" as such.

It is not enough that the person be an agent. It is necessary that the activities in question be performed in his capacity as agent. See *Viereck v. United States*, 318 U.S. 236, 243.

The Local at all times during the course of negotiations and during the periods covered by the contracts acted in its own interest and at no time purported to act in any capacity for the International.

The record is devoid of any representations by a Local official that he was acting for the International. The contracts by their very terms state that the principals of the contracts were the Local and the Association. One of the recitals in the contracts is as follows:

"It provides for collective bargaining and as such must recognize as principals *local unions* and insulating contractors associations composed of insulating contractors known and recognized as such within the trade. (R. 1075)"

The President of the Association recognized that the Local and not the International was the party to the contracts (R. 175-177). Even Eley, the charging party, recognized that at all time he was doing business with representatives of the Local and not the International (R. 459, 460).

E. The establishment of an international form of agreement does not make the Local the agent of the International.

The adoption of the International form of agreement does not in any way alter or change the status of either the Local or the International in their relationship with each other. Local unions historically receive their authority from the international union which charters them and are in turn limited by the terms of the international constitution or local constitution or both as long as the local chooses to remain affiliated. It necessarily follows that a local cannot or should not enter into a contract in controvention of the express terms of its constitution. This would be true whether a specific provision limits its contract authority or not. So then the act of this International in adopting an international form of agreement "only for the purpose" of certifying that it doesn't violate the International Constitution and Bylaws, and which is "approved as to form and substance for that purpose only and no other" in effect adds no unusual restrictions upon the Local which would alter the established and traditional relationship between the Local and the International.

An examination of the agreement will reveal that there are many bargaining subjects not covered by the International form of agreement, and many are covered in such a general fashion that there is much room for additional bargaining on the subjects. If we are to accept the theory that formal restrictions in the form of a bargaining agreement without more altering the relationship of this International and the Local then we must conclude that any restrictions on the activity of local unions in an international constitution will abolish the separate identity of the local. (As a matter of fact the testimony shows that this provision in the Constitution was more honored by its breach by this Local than by its compliance with it. The testimony of the President of the Association was to the

effect that in the past many articles of the International form were changed by the parties (R. 178-180) and in fact the International form of agreement was not used by the Local at all from 1949 to June 30, 1953 (R. 1059). It would be manifestly unjust to hold this International liable for a provision of its Constitution which was followed by this Local only when and if it saw fit.)

Clearly then there is no question of the exercise of apparent authority by the Local, nor is there ratification by the International of activities of the Local. It is submitted that the advance approval of an agreement form is not a designation of this Local as a bargaining representative of the International. Nor does it by this action assume liability for any trade practices which this Local may establish with employers of its own choosing in its trade area.

The Board has assumed, without establishing, that the Local is the agent of the International and because there are restrictions on the alleged agent, then reasons that they are joint participants in a common enterprise. The Petitioners can find no legal basis for this argument. The Board has stated without judicial precedent as follows:

"In insisting that Local 47 negotiate on the basis of such agreements, the International necessarily contemplated that Local 47 would interpret and administer the terms thereof in accordance with the intent of the International when it adopted them (R. 1105, 1106)."

This is an extremely broad assumption, not based upon the Record, but even if it were true it assumes an International intent at the time the Constitution was adopted in Convention assembled in 1952. But this does not establish the converse proposition which the Board reasons to, that each intent adopted by a local subsequently becomes the International intent, or in effect that International intent is the sum total of all local trade practices, which are subject to constant change and which naturally are not identical, in fact oftentimes completely contradictory.

But since the activity of the Local was in its own interest it cannot in any event be deemed to have acted as the "agent" of a "labor organization" with respect to the International. Nor can the mere fact that the International Constitution places restrictions upon its locals be said to create an agency status between the locals and the International.

Any other conclusions would mean, in effect, that local unions are acting for their internationals for all purposes and that locals have no real existence or responsibility apart from their internationals. It means that every act of a local is without more imputable to the international. This would be in direct conflict with Congress' careful distinction in Section 9(f) of the Act between a "labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit," and its clearly expressed intent that a labor organization was to be held responsible for the acts of those who collectively constitute it, its members, only when they acted for the entity "as" agents.² The Act gives "recognition to union personality," *United States v. White*, 322 U.S. 694, 703, it makes clear that local unions have separate identities and separate existence, cf. *NLRB v. Harris-Woodson Co., Inc.* 179 F. 2d 720, 722-723. When a local acts "in its own interest," as the Local did in this case, it does not without more act "as agent" of its international.

² "Mr. Taft * * *. There must be legal proof of agency in the case of unions as in the case of corporations; but I do not think there is anything in the fact that a union is an unincorporated association which would bring about a condition in law that the act of every member is necessarily charged to the labor organization. No, I think not." 93 Cong. Rec. 4022, see also 93 Cong. Rec. 4435.

F. The terms of the international form of agreement did not in any way affect the employment status of Eley.

The International can in no way be held responsible for the discharge and non-reinstatement of Eley. Assuming, *arguendo*, that the International is responsible for the execution of the 1953 agreement, the only clause in this agreement held to be discriminatory on its face was Article IX. There is no testimony that this clause affected the conditions of employment of Eley and it is obvious that it does not in any way affect the hiring practices of the parties. The only other clause in question, Article VII, was held to be ambiguous. The International cannot thereby be made liable for hiring practices established by the parties during the period covered by the agreement. If liability is to be established because of the agreement then it can only apply to the terms of the agreement, none of which by their terms affected the employment status of Eley.

CONCLUSION

It is apparent upon review of the matters contained herein that the charges made against the Petitioners were completely unfounded and not established by the testimony. The testimony likewise failed to establish trade practices between the Petitioners and the Association and Company which brought about the discharge of the charging party. The contracts in question were not unlawful on their face nor did they bring about the discharge of Eley. The International took no part in the activity complained of and the Local was not the agent of the International for any purpose.

It is respectfully submitted that the Board's order

against the Petitioners herein should be set aside and its petition for enforcement against the Petitioners be denied.

Respectfully submitted,

CARLTON R. SICKLES

Counsel for the Petitioners

In No. 14,015

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151 et seq.), are as follows:

.

SEC. 2. . . . (13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

.

Rights of Employees

SEC. 7. Employees shall have the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Unfair Labor Practices

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . .

.

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) To restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Pro-*

vided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

Representatives and Elections

SEC. 9. * * * (f) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless such labor organization and any national or international labor organization of which such labor organization is an affiliate or constituent unit (A) shall have prior thereto filed with the Secretary of Labor copies of its constitution and bylaws and a report, in such form as the Secretary may prescribe, showing— * * *

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,015

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS
AND ASBESTOS WORKERS, AFL-CIO, AND INTERNATIONAL
ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS
WORKERS, LOCAL 47, AFL-CIO, *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

No. 14,093

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

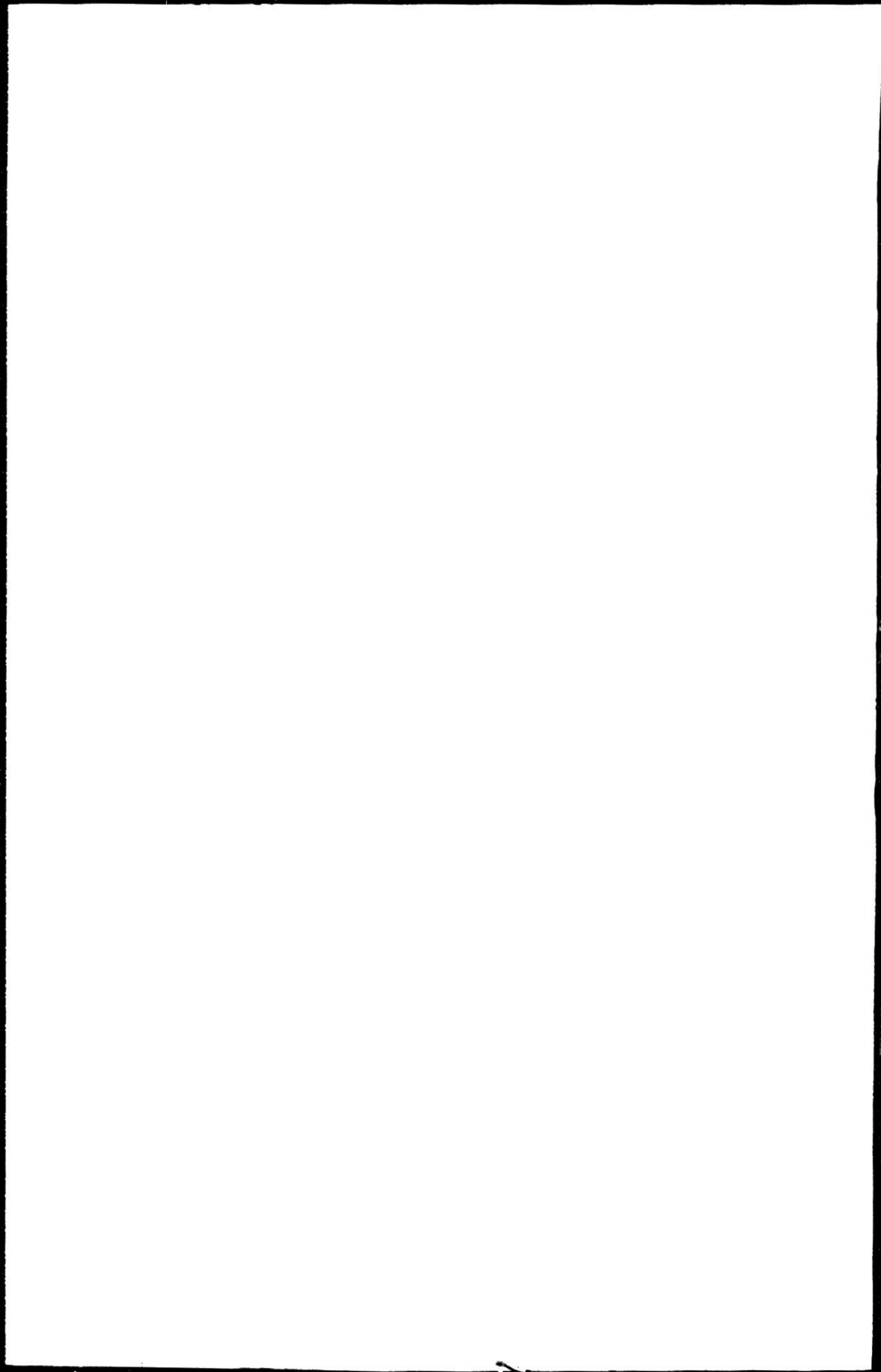
v.

ALEXANDER-STAFFORD CORPORATION, AND THE MASTER IN-
SULATORS ASSOCIATION, *Respondents.*

On Petition to Review and on Petition for Enforcement
of an Order of the National Labor Relations Board

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Counsel For Petitioners
In No. 14,015



UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,015

INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS
AND ASBESTOS WORKERS, AFL-CIO, AND INTERNATIONAL
ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBES-
TOS WORKERS, LOCAL 47, AFL-CIO, *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

No. 14,093

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

v.

ALEXANDER-STAFFORD CORPORATION, AND THE MASTER IN-
SULATORS ASSOCIATION, *Respondents.*

ON PETITION TO REVIEW AND ON PETITION FOR ENFORCEMENT OF
AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

REPLY BRIEF FOR PETITIONS IN NO. 14,015

Petitioners deem a Reply Brief essential in order that
the issues involved may be properly presented to this Hon-
orable Court.

I

The Board, by its very determination that Articles VII
and XI of the contracts were, at their very worst, ambigu-
ous, thereby admits that these clauses do not violate the
Act.

With respect to the separate issue of the trade practices established between the Local and the Company, the Board, in its argument, can only rely upon the testimony of Bond, the President of the Association about how his company operates, which is immaterial here, and statements of Sasser concerning the unilateral policy and understanding of the Company. The uncorroborated testimony of the charging party, Eley, can add little, and at most, only attest to Company practice.

With respect to the bylaw of the Local and the testimony of Fisher, which are the only matters set out which are relevant to the trade practice of the Local, these matters are considered in detail in the Petitioner's Brief, but it is interesting to note that the activity established is a far cry from the matters complained of by Eley in his Charge (Petitioners Brief, pgs. 3 & 4) which included a request by the Local for his discharge, the threat of a strike, and the blocking of his re-employment by other employers.

In all, there has been no showing that there was a trade practice between the Local and the Company, agreed to and understood by both parties which required the Company to secure all its asbestos workers through the Local. At most, the Local agreed that it would refer nonmembers to the Company upon request. It cannot be argued that a Local must be a hiring agency and provide employees on a non-discriminatory basis merely because it agrees to provide some. Such a requirement can only be conditioned by the Local's being the agreed exclusive source of supply for the employer.

There is no testimony that the alleged practices have ever been applied to anyone other than the charging party. There is no hint that anyone else suffered from it. If this were a practice we must assume that there were parties affected by it. We cannot have a practice in a vacuum. We further cannot assume that it was designed exclusively for Mr. Eley.

The facts are that there was no established practice which required the firing of Eley when members of Local 47 were unemployed.

II

The Board has failed to substantiate that Article IX of the contracts and paragraphs 1, 2, 3, 4, and 6 of the supplemental agreements are unlawful on their face.

In the *Gaynor News* case, relied upon by the Board, in its Brief on pages 23 and 24, in support of its contention that the clause, "members of Local 47," makes Article IX unlawful on its face, the agreement in question not only provided for the exclusion of nonmembers but there was actual discrimination against nonmembers by the employer in payments to his employees.

The Petitioners agree that it would be improper to provide by agreement that nonmembers are to receive lesser benefits than members, or to actually deprive nonmembers of benefits bargained for. However, the only testimony relative to this clause was to the effect that no nonmember suffered by it and there was no testimony as to its being interpreted by anyone as depriving nonmembers of equal payments.

The Petitioners contend that there is no reason to infer from a reading of the clause above that nonmembers shall be treated differently and that thereby there would be an advantage to being a member of the Local.

III

The Board has failed to establish that the Local, in any way, attempted to secure the discharge of Eley. The only evidence of what happened on the day of discharge, which helped Eley's cause, is his own. The Trial Examiner choose to believe Eley rather than Sasser and Kranenberg as to what happened at that time. But at best there is confusion

as to the incidents surrounding his discharge. The Board relies upon the uncorroborated testimony of Eley. (R.1068-1071)

The essential difference between the *Gottfried* and the *Local 743* cases relied upon by the Board on page 27, and the facts in this matter is that in those cases there was an executed agreement clearly requiring union preference, which is not the case here.

It is interesting to note that lacking any direct evidence, the Board relies heavily on what occurred in 1950 and ensuing years, all prior to the use, by the parties, of the current agreement, and an obsolete bylaw adopted in 1943 to augment a permit system which has long since been abandoned by the Local.

The reasons for the discharge of Eley by the Company are best known to it and have never been established. Significantly no connection has been made between the Local and the discharge because there is none.

The Board has neither established a Local practice causing Eley's discharge nor any participation by the Local in events leading to his discharge.

IV

The arguments presented by the Board as to the responsibility of the International serves to emphasize again what was so clearly recognized by the Trial Examiner, namely that the International was in no way connected with the negotiation, administration, or enforcement of any written agreements or understandings between the Local and the Company, and further in no way connected with the discharge and nonreinstatement of Eley. (R.1077)

Lacking any participation by the International in the alleged activities of the Local, great emphasis is placed upon the terms of the Constitution and Bylaws in an at-

tempt to establish a relationship between the parties through this medium.

The provisions of the Constitution referred to in the Board's Brief on pages 28 and 29, do not make the International responsible for the activities of this Local. The fact that there are some limitations placed upon the Local does not by that fact alone make the Local the agent of the International. While it is true that under some circumstances, a local union charter may be suspended or that local union officers may be suspended, the facts are that this was not the case here and the Local was continuing to conduct its affairs in its own interest without any participation on the part of the International. The Local functioned as a self-governing body and conducted its own business affairs, governed by officers which the membership elected. The Local negotiated its collective bargaining agreements with its local employers, each party recognizing the other as the principle to the agreement. The agreements were binding upon the Local and the employers which signed them and no one else.

The reference by the Board to Article XX, Section 5, (R.945) must be read in the light of the limited duties of the International Secretary as set out in Article IX (R.925-927). The Secretary performs his functions only in the field of records, financial transactions, and supplies. Since he is limited to these fields in his dealings with local unions, his decisions can only be with relation to these topics. The resulting uniformity from such a provision in these limited fields cannot be said to seriously affect or limit local autonomy and again since there is no allegation that the International Secretary was in anyway involved in the facts herein this section is immaterial to this cause.

The *Chicago Typographical Union No. 16* case referred to by the Board in its Brief on page 31, only serves to point up the elements necessary for participation by an international union in the affairs of its locals. In that case the

contract by its terms spelled out that it must have the approval of the International and further, the International participated in the negotiations, having been designated to negotiate the agreement by the employees. There is a marked difference between providing a standard form of agreement as here, and requiring International approval of a local agreement, including all terms and conditions established therein after it is negotiated, but before it is effective.

In the *Patton* case and the *Laburnum* case, also cited by the Board on page 31, the distinction must be obvious that those cases do not involve local unions but rather districts of the United Mine Workers which are divisions of their international headquarters. In both cases it should also be noted that the point at issue was "organizing" which function was performed in the international's interest.

Failing to produce any principle of agency upon which to hold the International liable, the Board has relied upon the novel principle of "co-sponsorship." It is submitted that this is an unreasonable extension of a principle which appears to have little basis for application apart from analysing business relationships, particularly where it is determined, in light of the peculiar facts in each case, that more than one firm are operating what is essentially one business. There appears to be usually active participation, common employees and oftimes a family relationship. It is noted that in the *Auctor Co.* case the employers association therein was a party to the agreement in question.

Since such emphasis is made by the Board upon the use of the model form of agreement, under any circumstances International responsibility, if any, must be limited to the terms of the model agreements. The only clause in question then is Article IX and since this clause in no way affected Eley's employment there is no responsibility upon the part of the International.

With reference to the other and distinct question, namely, the practice of the parties, there is no allegation by the Board that the International established or participated in any way in the practices established by the Local and its employers and therefore, it can in no way be held accountable for them.

Respectfully submitted,

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